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Select committee on Administration of
Justice
Proceedings



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PROCEEDINGS
of the
SELECT COMMITTEE OF THE
ONTARIO LEGISLATIVE ASSEMBLY

APPOINTED TO ENQUIRE INTO AND REPORT
UPON CERTAIN MATTERS CONCERNING THE
ADMINISTRATION OF JUSTICE IN THE PROV-
INCE OF ONTARIO.

===== ~ ~ =====

Vol. 12.

Friday, June 15, 1951.



R. C. Sturgeon,
Official Reporter,
Room 121,
Parliament Bldgs.

Doyle

1678

T U E S D E Y

Toronto, Ontario,
Friday, June 15, 1951,
At 10.30 o'clock a.m.

---The further proceedings of this Committee reconvened pursuant to adjournment.

---All parties present.

---Same appearances as heretofore noted.

THE CHAIRMAN: I will call the meeting to order. We might continue with Deputy Commissioner Doyle.

EDWARD THOMAS DOYLE,

A witness previously heard, and now recalled, who having been already sworn, continues his testimony as follows:

BY THE ACTING CHAIRMAN:

Q. Deputy Commissioner Doyle, in the absence of the Chairman, will you continue your evidence?

A. Yes, sir. There has never been any interference in connection with the operation of the anti-gambling branch of the Ontario Provincial Police by anyone, at any time. It has had the utmost support from our superiors, especially from the Hon. the Attorney-General (Mr. Porter), the past Hon. Attorney-General,

the Deputy Attorney-General (Mr. Magone) and his and his solicitor. We have conferred with the Deputy Attorney-General many times in connection with matters relating to law. The Deputy Attorney-General has on important cases himself accompanied us to the courts and prosecuted. We have also had their solicitors from the Department of the Attorney-General, Mr. Hope, and Mr. Bull, and the Crown Attorneys throughout the province have always co-operated in every way, in connection with the prosecution of the gaming sections of the Criminal Code.

BY MR. JOLLIFFE:

Q. Deputy Commissioner, just before you leave that point; do you care to say anything about the sentences which have been meted out by the magistrates in gaming cases?

A. I have noticed since last year -- and particularly this last six months -- that the sentences have been more in line with the offences which have been committed; that is, book-makers are being sent to jail.

I have also noticed in a report a few days ago where three found-ins, as I recall, were fined \$100 and costs.

As a policeman, we know that these persons

bet unlawfully, and frequent disorderly houses, or we would not have any book-makers. The disorderly housekeepers go hand in hand with those who patronize them, and I feel in order to suppress any unlawful betting and unlawful gaming, that the persons who actually take part should be punished severely, in order to suppress vice.

Q. Well, I notice the offences created by Section 235 of the Criminal Code are indictable offences; but there have been no prosecutions by way of indictment, have there?

A. Not in recent years, we have not had any.

Q. The practice has been to prosecute summarily?

A. The only case we have had was 25 or 26 years ago. That was a gaming house keeper at Bridgeberg.

Q. All right, thank you.

A. Last December I assisted Staff Sergeant Tomlinson at Windsor. We executed ten search orders, and to my surprise, we found in many of the places, or most of the places, that the telephones had been removed. We reported this to the Bell Telephone Company on the 4th of December, and the manager stated that to have the report verified these telephones were moved from the premises, he would

like us to accompany his men again to the premises.

This we did and they found what we had found, and since our searches on the previous Saturday -- 2nd of December last -- in one place where there was one telephone and two lines connected with switches -- not Bell Telephone Company's equipment -- we found that the telephones had been taken out and the switches and lines had been cleared from this little office, and the Bell Telephone men investigated, and they were informed that no work order had been issued by the Bell Telephone Company, and we were told the lines had been removed by persons other than officials of the Bell Telephone Company.

BY THE ACTING CHAIRMAN:

Q. Had they advance warning that you were going in?

A. No, sir, not that we were going back.

Immediately the manager of the Bell Telephone Company asked us to co-operate. He got search warrants out and men were posted at the various places until we got around with the linemen.

The main office -- that is, the office with Phone 3822 -- which had been in operation continuously prior to December 2nd, with Toledo, was not in the premises at all at 269 Sandwich Street.

The Bell Telephone Officials climbed a
and pole/through their searching they were of the opinion
that the line was to an apartment over No.267; we
went up there with the permission of the lady who
was in attendance, and we discovered this; that
telephone had been moved, but there had been three
telephones in that apartment.

I have not heard of any prosecution against
any person for the theft of the telephones; nor have
I heard of any action being taken by the Bell Tele-
phone Company against any person who removed those
telephones.

During our investigation we were told it was
a new idea entirely that we had run into there, that
they were moving the telephones around and manipulating
them and that there was a man going around with the
telephones, and he would dial a certain number, and
put the service into operation, and then take the
phone away. That is where there were two or more
telephones.

I think that some action should have been
taken by the Bell Telephone Company against some-
body. Perhaps there has been action taken, but I
have never heard of it.

We suggested on the 4th of December, to the manager of the Bell Telephone Company, that in view of what we found, that all services to Howard Kerr be disconnected, and we were told at that time that the matter would have to be referred to a superior, and it would be decided upon.

Many of these telephones which were removed, had the services discontinued.

BY MR. JANES:

Q. Those telephones would be worth quite a bit of money? There would be quite an investment there, for somebody to carry away?

A. Yes, sir. I understand, when I had direct charge of the anti-gambling branch, that any person of whom they have any suspicion leaves a deposit with the Bell Telephone Company to cover the cost, if the telephones were seized, destroyed or confiscated.

Q. We were told they never had any suspicion of anybody, and never took any deposit?

A. I have a different opinion of that. During my discussions with the Bell Telephone Company in the early days of the anti-gambling branch --

BY MR. JOLLIFFE:

Q. The position is a little different now,

since the amendment to the Code, which makes an exception of telephone equipment.

A. Mr. Jolliffe, as a policeman, our first duty is to prevent crime, and the next duty is to protect life and property, and then detect offences, and then we have numerous other duties.

In order to prevent crime, when the police find a back end in operation, and they have the evidence -- that is, if they find the sheets recorded, and there is a bona fide case -- why should the police leave the telephones? That is the main thing in those offences. That is how they get their bets -- over the telephones. Why should the police leave the telephones in the premises for a continuation of an offence?

Furthermore, I think, under Section 629, we have the right of a search warrant, and that would mean we would have to take out a search warrant, as well as a search order, to seize telephones, if used in conjunction with an offence. But we cannot get the confiscation of the instruments.

Q. I think perhaps you are right, although there is no doubt that parliament in its wisdom -- and I think at the behest of the Bell Telephone Company -- decided to stop the confiscation of tele-

phone equipment.

A. I would point out, Mr. Jolliffe, in the interests of the war effort, no equipment was ever destroyed. The confiscations were made, but we returned the equipment to the Bell Telephone Company.

The picture is different to-day and I believe that if persons are found using telephones in contravention of the provisions of the Criminal Code, they should be seized, and we should have the means of confiscating them and destroying them, just the same as any other instrument of gaming, or anything else in conjunction with the gaming sections of the code.

Q. Of course, the difficulty is, they are not really the property of the accused or the convicted person.

A. Then, sir, in connection with slot machines; the majority of the slot machines are not owned by those who have them. There is the odd one owned by the person operating it, but the majority of them are owned by distributors, and we have prosecuted the distributors as well as the persons in possession of the machines, if we could prove the distributor was guilty of an offence, the same as the person accused.

BY MR. GRUMMETT:

Q. The difference there is that the slot machines were being primarily intended to be used for an illegal purpose, whereas the telephone is primarily used for the transmission of legal messages. I think that would be the distinction upon which the House of Commons acted when that amendment was passed.

A. There would be a slight distinction. In view of the fact that book-makers use telephones, the Bell Telephone Company should make sure as to who gets those telephones.

This condition down in Windsor is something new to us. In regard to these gamblers who just moved the telephones at will, and violated the provisions of the Act, apparently nothing has been done about it.

BY MR. JAMES:

Q. In regard to your statement that the Bell Telephone Company take deposits for these telephones; I brought that question up with the Bell Telephone Company, and I am assured that there are no deposits taken for anything, that anybody can go and get that service. It is rather amazing.

A. In connection with Windsor -- and this is second-hand information, but it came from a reliable police officer -- I was told they were trying to contact Howard Kerr to return some money to him, which would indicate he had some money on deposit. That is what I was told, but the person might have been giving me wrong information.

Q. Mr. Deputy Commissioner, how many instances, do you recall where telephone equipment was changed from one location to another, apparently by those engaged in illegal betting?

A. I only know of those places at Windsor. There are quite a number there.

Q. Do you know if any steps were taken by the Bell Telephone Company to prosecute?

A. No; I never heard of any person being prosecuted.

Q. You know of the provision in the Criminal Code where a heavy penalty is provided for anybody interfering with equipment of that type?

A. Yes, sir.

Q. And the Bell Telephone Company to your knowledge, did not take steps to prosecute those instances?

A. No.

MR. JANES: That would indicate that they were not losing anything, that they had taken a deposit to cover those telephones.

MR. GRUMMETT: What is that?

MR. JANES: That would indicate they were not losing anything, but they had taken a deposit to cover those telephones, and to cover their losses.

BY MR. JOLLIFFE:

Q. They recovered all the equipment, I suppose;

A. Yes.

BY MR. HOUCK:

Q. Staff Inspector Tomlinson told us that in Windsor you found four Detroit telephones -- I think it was the Cherry exchange; were they removed?

A. That was before the December raid, sir, I do not know anything about that.

Q. Then, Mr. Deputy Commissioner, you feel that the telephone and telegraph is absolutely the cancer of the whole book-making operation?

A. Together with the radio, and the Daily Turf & Sporting News, and the racing entries, the selections, post times, and the results; they all help to give business to the book-makers, and it is a means for

the unlawful patrons to get their information concerning what horse they want to bet on.

In connection with radio; there is another thing, gentlemen, I will point out -- that we have seized radios with racing information coming in, during the time of our searches. These have been confiscated.

BY MR. JOLLIFFE:

Q. There probably will be more of that.

A. If the radio can be used as well for an unlawful purpose -- for a legitimate reason as well as an unlawful reason.

Q. I suppose there are hundreds of what we have called "ham" operators in the province of Ontario, that is to say, amateur radio fans, who operate their own transmitting equipment?

A. Yes.

BY MR. JANES:

Q. They have to get a license?

A. Yes, they do, from the Board of Transport Commissioners.

Q. We have one up at home?

A. Yes. And the racing information would be coming from a legitimate station.

Q. Mr. Deputy Commissioner, do you know where this racing sheet gets its information now? The Canadian National Telegraphs stated they had definitely cut their line off. Apparently they are getting their information from some place.

A. I do not know. I believe Staff Inspector Tomlinson has an idea.

BY THE ACTING CHAIRMAN:

Q. It would be teletype, if it was not telegraph?

A. Yes.

BY MR. JOLLIFFE:

Q. I was interested in your remark about the duty of the Bell Telephone Company to enquire into the use of the telephones and I am very sympathetic to your point of view, but you see the difficulty is, Mr. Deputy Commissioner, that enquiry implies the right to withhold the service if the Bell Telephone Company was not satisfied it was to be used for a legitimate purpose. That is almost like a trial and conviction by the Bell Telephone Company.

I am sure you will agree we do not want any private company trying anyone and finding them guilty of an offence against the Criminal Code. That only

should be done by a court and not by a private company.

A. Well, sir, the police do not at any time make a nuisance of themselves or interfere with the rights of the citizens. Sometimes an inexperienced officer will make a little mistake, but after a man gets the experience, he knows the rights of others and he does not make a nuisance of himself.

He is not going to report on a decent citizen, or any person, unless that person is violating the law. If the person is violating the law, every means is taken to put that person out of commission -- I am speaking now in connection with disorderly houses -- and if the telephone is the means of a continuation of that offence, in the interest of crime prevention, surely we should have some means of getting the co-operation of the Bell Telephone Company, and if not within the law, then with some sort of legislation, so as the public purse will not be spent needlessly. It costs money for police to be making observations and continually searching. If you go into a place under suspicion every day, that place will discontinue while you are in there.

Q. Yes, that is right, but I was not thinking so much of the police when I made my remark. There

is the danger of swinging from one extreme to the other. I think you are entitled to expect from the Bell Telephone Company the same co-operation you are entitled to expect from any law-abiding citizen. But you do not want the Bell Telephone Company to constitute itself the judge as to whether or not the people are using the telephones for an unlawful purpose. That would lead to all sorts of difficulties.

For example, supposing a malicious gossip reported to the Bell Telephone Company that the lady who lives next door has many visitors and she thinks she is operating a bawdy house. If she is operating a bawdy house, that is something which should be decided in court, and not by the Bell Telephone Company.

(Page 1693 follows)

If the Bell Telephone was to act on reports of that kind, or its own suspicions, they would be denying justice to that woman in a way that would be quite inconsistent with our system of justice.

A. I point this out to you, Sir, that under the Liquor Control Act, if a peace officer diligently tries to put a bootlegger out of commission and the bootlegger outwits the policeman through his manner of operation, after the officer has done his utmost, he can submit a report to the Liquor Control Board and all the privileges of that person can be cancelled if the Board sees fit. Why not do the same thing in another way in connection with the telephones?

MR. JOLLIFFE: I think there is quite a difference between a license granted by the Liquor License Board, and a telephone gets as a matter of right; he is entitled to get it without discrimination, and he does not need a license to get it. I think there is a real distinction there.

BY MR. GRUMETT:

Q. In putting the bootlegger out of business, Deputy-Commissioner, after there has been a conviction, you can ask the Magistrate to declare the premises a public place?

A. Yes.

Q. That puts the premises out of business?

A. Yes.

Q. Well, after a conviction, for using a telephone for conducting a common gaming house, the Bell Telephone Company will remove the telephone which is on a par with the action taken in connection with bootlegging. I think that is about as far as you can go. You cannot make the Bell Telephone Company pass judgment on each and every subscriber.

A. It would appear that there is special legislation in the Criminal Code, under Section 641, sub-section 4, for the Bell Telephone Company.

Q. You mean --

A. So that we cannot seize the telephones, if we find an offence being committed where the telephone is used.

MR. JANES: Mr. Munnoch definitely stated he wrote that amendment.

MR. JULLIFFE: It is perfectly obvious it was passed at the request of the Bell Telephone Company.

BY THE ACTING CHAIRMAN:

Q. June 15th, 1951, which reads as follows:

"Hon. Dana Porter

"Chairman, Ontario Legislative Crimes Committee

"Sir:

" I wish to advise you, please, that Mr. Hawley, Public Relations Officer of the Canadian National Telegraph Company, advised me by telephone this morning that the local unequipped telegraph circuits, formerly in operation in the city of Windsor, had been out since Feb. 12th, 1951"

That is signed by Staff Inspector Tomlinson, in charge of the anti-gambling branch, Ontario Provincial Police.

MR. JOLLIFFE: I suppose that means discontinued?

THE ACTING CHAIRMAN: Yes.

EXHIBIT NO. 96

Memorandum, Tomlinson to Chairman, June 15th, 1951 as presented by the Acting Chairman.

BY MR. HOUCK:

Q. We have had a lot concerning the Bell Telephone Company not co-operating with the police. What have you to say about that?

A. In part, they have co-operated.

Q. Just in part?

A. Yes. I mentioned yesterday that in March, when we executed a search order at the A.P.Jones Co., I

went to the Bell Telephone Company and they sent over two linesmen. That was about 5.15 in the afternoon, and the linesmen told me it would take a half a day to disconnect the switchboard, and there were twenty-six lines, and one ordinary line which went from Hamilton to Fort Erie, and which served ten book-makers between Hamilton and Fort Erie, St. Catherines, Merritton, Thorold, the Township of Crowland, and four telephones in Fort Erie.

I thought I was doing them a favour, and I said "If your day's work is through, it will be quite all right to come back in the morning". They went out and we went back the next day, and the Bell Telephone Company's men never showed up, and I called the Bell Telephone office, again, but no person came. So we had to hire electricians to assist us in disconnecting the service.

At another time, I would say was in connection with the Royal York Road. I feel that by leaving the equipment in Royal York Road, when they discontinued the service, it was just for a purpose. They felt that no doubt the proprietor of the place would appeal but I cannot help but think that if the service had been taken out at that time, it would have never gone back in again.

BY MR. GRUMMETT:

Q. Mr. Deputy Commissioner, from your remarks I gather you feel that the use of the telephone being continued, the person committing the offence makes it much more difficult in the enforcement of the law and order if, when making a raid, you could have the telephone removed which would assist you, whether or not that person is prosecuted or whether or not there is a conviction? That is your attitude?

A. We would not take the telephone out unless we had grounds for a prosecution. We never did. If we entered a premises and thereafter decided not to prosecute, we never disturbed the telephone. But if there was sufficient evidence to prosecute and we had a bona fide case, we took the telephone.

Q. In some cases, you did take out the telephones, and later on no prosecution resulted; is that not a fact?

A. I do not recall any that I have handled.

Q. Would it be of any assistance to the police if some sort of hearing could be held, in some court, where the police can produce evidence to the effect that a person using the telephone is undoubtedly engaged in betting, but the evidence is not strong enough for a --

A. A conviction?

Q. -- yes, for a conviction, and the whole question would not be on the guilt or innocence of the accused, but whether or not it would be good policy to have his telephone removed? Would that be of any assistance?

A. Yes, it would.

MR. DONNER: That would be a very dangerous thing to do. It would establish a dangerous precedent.

MR. GRUMMETT: I admit that.

BY THE ACTING CHAIRMAN:

Q. You actually think to suppress this, the desire is to have more co-operation on the part of the Bell Telephone Company?

A. Yes Sir.

BY MR. GRUMMETT:

Q. The denying of the use of the telephone would serve notice on the gamblers, whether you have sufficient evidence to convict or not?

A. (No audible answer).

BY MR. HOUCK:

Q. I notice that in all the tracks, since they started last spring, the betting is up over last year.

Is that an indication that book-making is on the down grade?

A. No, I would not say that. I think that is accounted for by the good times.

In connection with this betting business, there are a lot of people who go to the race tracks and place a small bet, which differs from those who place big bets off the track. I know one race horse owner who told me at Fort Erie that all the big bets were placed before he came to the track.

BY MR. JANES:

Q. Do you know of any book-maker operating in Toronto at the present time?

A. In connection with --

Q. I mean having a big set-up?

A. I do not know of any big set-up, no. Not the kind which used to operate. Law enforcement in connection with vice has improved, the energetic work of the policemen has caused the open betting houses to discontinue, but betting still goes on.

As near as we can tell, the situation is much better. There is nothing open down there at the present time, but it is the same thing in other parts of the province.

Prior to 1942, as I mentioned yesterday, we

had these big places in the suburban area operated in a big way, such as the Combine Club in Etobicoke Township, which would hold possibly seven or eight hundred patrons. They had a great patronage. They had a big parking place behind which would accommodate hundreds of cars and they had a "phoney" front; there were only two doors, as I recall, at the back. (Indicating) Here are pictures of the premises. This (indicating) is the parking lot, but all of these places are gone.

BY MR. JAMES:

Q. That would indicate that the betting is on a smaller scale?

A. No. I would say not, Sir. With the increase of population. Of course, during the early days of the anti-gambling branch, many men were in the armed services and I would say there is just as much betting going on, only it is not done openly.

EXHIBIT NO. 97,
Photographs of Combine
Club as Identified by the
Witness Doyle.

THE WITNESS: May I come back again to the telephones? Many bettors would use the telephone, and possibly they would have established credit with a book-maker, and just settle up from time to time.

To give you an example. I was at the track some time ago and this man showed me a cheque. I was on duty at that time at the Hamilton Race Track, and this gentleman asked me if I had a minute to spare, and he took a cheque out of his pocket made payable to a certain man we always suspected as being a book-maker, but who always denied that he was and the cheque was for \$5,000. and some odd dollars, and he explained to me that the cheque was for bets he placed with this book-maker, and he was going to recover that money because the book-maker had "welched", he went through with it, and he got judgment against the book-maker.

That is an explanation of how the betting was done. This man would telephone to this particular book-maker and place his bets, and from time to time, he would issue a cheque.

Q. There are none of those big places operating, it would indicate there are more book-makers operating in a small way? Would that be the indication?

A. No, I would not say there were more book-makers. I think the book-makers are being suppressed, but I believe there is almost as much illegal betting going on.

BY MR. HOUCK:

Q. I would like to know your opinion of the

legalizing of book-makers. I think it would be a mistake myself to license book-making. I do not advocate it, but I think it might possibly cut down book-making, while the Ontario tracks were running, that is, if the tracks were agreeable, for the tracks themselves to have branches at particular places in the province. It could be arranged to have a direct line from the branch to the track, and possibly closing off betting some minutes before the race.

BY MR. JOLLIFFE:

Q. What do you think of the suggestion that these wires to the race tracks should be closed down?

A. I think they should be cancelled, myself, if it was possible.

Q. You think that would make it more difficult for the illegal bookies?

A. You will have to go the whole way. Half-way does not mean anything.

Even if the wire service was discontinued, your radio, or the Racing Form, the daily entries in the newspapers and the results and selections, and so on -- you would still have those difficulties if the border states continued to permit the publications, some person would soon get into the business of having a few papers flown over and copies would be made in particular centres

and you would have the same thing.

BY MR. GRUMMETT:

Q. Even if the wires were discontinued from the tracks would there not be other means of getting at the information, such as signals or walkie-talkies or something of that nature.

A. They did that here in the city a year ago. According to the track officials, there is not supposed to be anything given out from the tracks. The tracks, as far as the public is concerned, have no access to the telephones. I know from a conversation I had with a certain track official that in the olden days, down at the Woodbine, they were doing the very same thing there. They would pick out a vantage point, and see the boards, and they would get the particulars from the boards, and pass them on in that way.

Q. By means of signals?

A. By means of signals, yes.

Q. It would be equal to spying?

A. Yes.

BY MR. JANES:

Q. If it was known that they could go to Court for an illegal business --

A. Anything over \$40.

Q. Even if it was illegal, he could still go to Court and collect it?

A. In connection with gaming, yes.

BY MR. HOUCK:

Q. How do you receive most of your complaints concerning the book-makers?

A. We get some complaints from the wives of men who frequent book-makers. Much of the work, Mr. Houck, is done through detection. The members of our anti-gambling branch have contacts who go here and there and make investigations, and finally they have their results.

We have had many complaints from women who possibly have had difficulty in running their homes through their menfolk spending their pay checks in connection with placing bets, and perhaps in odd cases frequenting disorderly houses where gaming houses are being conducted.

Q. I think Mr. Munnoch yesterday used the expression that you received most of your complaints from people who have "chips on their shoulders"?

A. That is not so, Sir.

MR. JOLLIFFE: He said "axe to grind".

THE WITNESS: No, that is not so.

BY MR. HOUCK:

Q. But the wives of these fellows are complaining that the men are spending their money in the book-makers?

A. Instead of turning the money into the home and looking after the family.

BY MR. DOENER:

Q. Mr. Deputy Commissioner, are you conversant with the situation in the State of Michigan?

A. No, Sir, I am not.

do
Q. What/they do to control betting?

A. No. I have just been over there a few times. I do not know what they do.

BY MR. HOUCK:

Q. Is there any set-up of which you know, from Buffalo to Fort Erie?

A. There was a set-up in Buffalo. After about the 10th of May, 1942, the Racing News Service came in from Buffalo and from Buffalo it was re-transmitted to A.B. Jones at Hamilton and from A.B.Jones to the Royal York Road. There were many calls every afternoon from A.B. Jones to Royal York Road, and from Buffalo to A.B.Jones.

Q. And Fort Erie was getting some of those calls?

A. During the early days of the anti-gambling branch,

the racing news came into Buffalo from Hamilton, then I think it went back from Hamilton on this one-way Bell Telephone line, to St. Catherines, Merritton, Thorold, the Township of Crowland, Welland and Fort Erie.

BY MR. JANES:

Q. You say that line was discontinued?

A. Yes, that line was discontinued.

BY THE ACTING CHAIRMAN:

Q. Do you want to continue, Mr. Deputy Commissioner?

A. I also believe it would be in the interest of good law enforcement, if we had legislation to prohibit the slot machines, that is, the free-way slot machines, the race horse machines, the pinball machines, in Ontario, something similar to the Slot Machines Act.

It means that a majority of these devices are used for an unlawful purpose, and it means that members of the force have to spend time in getting the evidence in connection with the illegal operations.

In those cases, the operators, if they suspect that a person playing the machines is a peace officer, they will not pay off. But with their usual customers, whom they know, they play these devices, especially on the free-play slot machines. It is like the one-armed

bandit, . there are no property rights in them; they are on the same principle as that type of device.

I also feel that Section 641 should be amended to provide that when you find a betting house in operation, and you run into that situation, ' you can ask for the confiscation of any moneys you sieze. The same with Section 236, Lotteries, and Disposal of Merchandise by Chance.

I also feel . . some thought should be given to carnivals operating in this province. Most of their games are unlawful and they dispose of merchandise by chance.

BY MR. HOUCK:

Q. Are you referring to carnivals which are operated by men who make a practice of going around to different places in the province, or to the service clubs?

A. The way we make our deduction to this service clubs business is, it is just a cover-up for them to operate. They have a short season and many of the operators of these carnivals believe ' the police should be tolerant. I can't see where a policeman can be tolerant for three months of the year and then do his duty for nine months in the year. I think a policeman should be one hundred per cent all the year around.

(Page 1710 follows)

I think these carnivals should certainly ^{be} looked after.

Q. They get a license?

A. Yes. The members of the anti-gambling squad have had quite a number of convictions. They have a particular game, the "rolldown" game, which is very vicious, and a person playing it can loose a lot of money in a short time.

Then we find they have men who accompany the carnivals who urge the public on to participate in these games. It is our duty to protect the public. I am simply mentioning that at this time. Staff Inspector Tomlinson, no doubt, could give you more information as to what transpired, than I, in connection with carnivals.

Q. You are referring solely to the big-time operators, not the local service clubs, which conduct a carnival for itself?

A. No, I am referring to the carnivals which move from place to place.

BY MR. GRUMETT:

Q. And they perhaps ask to be sponsored by some service club in a town?

A. Yes.

Q. The sponsorship being intended to induce the police to be a little more tolerant?

A. Yes.

Q. And overlook the breaches of the law?

A. Yes.

BY MR. JANES:

Q. That would cover the fall fairs also?

A. Under the provisions of the Code, Section 236, at the fall fairs, they can dispose of merchandise by chance, whereas, in any other place, they could be prosecuted.

Q. Those operating the fairs can tell the Provincial Police to look them over, and any place they think should be closed up, to close it.

A. Yes. That worked very well.

BY MR. HOUCK:

Q. What about the sale of these lottery tickets in the province?

A. That is hard to detect. We get a complaint occasionally and we investigate. We had one big lottery a few years ago from Niagara Falls. I will not mention the man's name --

Q. You are not referring to me?

A. Oh no.

He conducted a fake lottery and we spent two solid months -- every member of the anti-gambling branch -- investigating that lottery from Brockville to Windsor,

and north to North Bay and Fort William. Mr. Magone, prosecuted and the owner was convicted and sentenced to the reformatory for two years less one day.

Q. Mr. Deputy Commissioner, in order to suppress these gambling operations about which we have been talking, you have to have the whole-hearted co-operation of the citizens at large?

A. That is correct. Whether or not we can educate the citizens to assist the police, is another thing.

I think, myself, very strict enforcement of the law and of the provisions which apply pretty well to many other lines, get the co-operation of the citizens.

BY MR. CRUMMETT:

Q. Coming back to the pin-ball or slot machines, problem 4, you believe they should be banned the same as the ordinary one-armed bandit or slot machine?

A. Yes.

Q. In that they serve no useful purpose?

A. That is right. And there is a temptation to the youngsters to squander their money. We know where you have the free-play slot machines, it is for no other purpose than gambling.

Q. They serve no useful purpose in a community.

A. No, Sir.

BY MR. HOUCK:

Q. Are there many pin-ball machines operating in the province?

A. There are quite a few.

Q.. I mean pay-offs?

A. No. You have to get an operator who has the pin-ball machine to pay off, and they will not pay off unless they are reasonably sure you are not a policeman.

BY MR. GRUMLETT:

Q. You think that so far as establishing branches in a town where betting would be licensed, you would cut down the illegal book-making.

MR. DOWNER: While the races are on.

THE WITNESS: While the races are on in the province? I just mentioned them in connection with the race tracks.

I believe that so far as any betting being done in connection with legal tracks, it might cut down book-making, but I would point out to you gentlemen, that in a majority of cases, the police execute search orders to find evidence and we have found that a majority of the bets are made on horses at the American tracks, whether it be in the summer, autumn, winter or spring.

Q. Then if you did extend that privilege, you would have to make it an all-year-round practice, to have branches which would permit betting by pari mutuel methods on races being conducted in the United States.

A. No, I did not have that in mind. I was only thinking of the Ontario tracks.

Then you would have possibly a wide-spread gambling or betting if you opened up branches everywhere in the province all year around.

Q. It would increase tremendously the amount of money bet on races, in that those who will not now go to a bookie, would be inclined to drop in and bet in the legalized machine.

A. That is correct.

Q. And it would also become an evil just as great as book-making betting is to-day?

A. Yes.

BY MR. DONER:

Q. You say that the more facilities provide less co-operation from the general public because they would be educated that it was a legal thing to bet?

A. Yes, Sir.

MR. JANES: I was very much interested in your statement, Mr. Deputy Commissioner, that even when our

the first time, and the author has been unable to find any reference to it in any of the standard works on the subject. It is described as follows:

The plant is a small shrub, 1-2 m. high, with a dense, rounded crown. The leaves are opposite, elliptic-lanceolate, 10-15 mm. long, 5-7 mm. wide, acute at the apex, obtuse at the base, smooth, dark green above, paler below, with prominent veins. The flowers are numerous, white, bell-shaped, 10-12 mm. long, arranged in cymes. The fruit is a small, round, yellowish-orange drupe, 5-7 mm. in diameter.

The author has examined a specimen of this plant from the type locality, and it appears to be a distinct species. It is very similar to *Psychotria*, but differs in having opposite leaves and cymose inflorescences. The author has not seen any other species of *Psychotria* with opposite leaves and cymose inflorescences.

The author has not seen any other species of *Psychotria* with opposite leaves and cymose inflorescences.

own race tracks were operating, a greater proportion of the betting was still done on the American tracks.

THE WITNESS: That is, the unlawful betting?

BY MR. JANES:

Q. In that case, they have formed the habit of betting through the winter, when our tracks are not operating, perhaps due to the fact that the wins are larger - they make more money.

A. And there is a larger selection of horses and races. These men who are bettors will perhaps follow certain horses which are running at different tracks. Of course, there are more tracks operating in the United States than there are up here.

Q. There are larger purses and better horses?

A. Yes.

Q. Probably it is just a habit to bet in the off season, which is continued on some tracks?

A. That may be.

BY MR. HOUCK:

Q. I think that legalized gambling would be taking a backward step as far as our present generation is concerned.

A. I agree with you, Sir.

MR. JANES: No doubt about that.

BY MR. HOUCK:

Q. Do you have any complaints, Mr. Deputy Commissioner, of what they call a "boat race" at the race tracks, where a race is fixed to perhaps help out a fellow who has not been very successful and may have difficulty in meeting his feed bill?

A. No. When I was on the race tracks, I never heard of anything like that.

BY MR. DONNER:

Q. Do you have any complaints about the bookies which are run at these harness meets, during the summer?

A. Under the provisions of the Criminal Code, they can bet between themselves. At one track, I think it was at New Hamburg, they operated just the same as at the running tracks. They had the pari mutuels there.

Q. But most of them are just in the smaller places, and they just use the books? It is open betting to anyone who wants to go in. I was wondering if you had any complaints at all along that line.

A. No, we never got any complaints.

BY THE ACTING CHAIRMAN:

Q. They usually operate under some charter?

A. That is right.

THE ACTING CHAIRMAN: Shall we adjourn for five

minutes?

MR. JOLLIFFE: Yes, I think so.

---whereupon a short recess was had.

---upon resuming.

BY THE ACTING CHAIRMAN:

Q. Mr. Deputy Commissioner, have you any more evidence to place before the Committee?

A. No, I do not think so.

---the Witness retired.

- - - - -

MR. GRUMMETT: I think the Secretary (Mr. Vickers) wants to know something about filing the report in the Bossin case. The question is whether we should file this copy we have had left with us by Mr. Munnoch which was prepared by the Bell Telephone Company, or whether we should file the copy which Mr. Porter brought in, which I believe would be a more official copy. I think one should be filed.

MR. JOLLIFFE: I think it should be the official one; it has the reporters' name on it.

EXHIBIT NO. 93

A transcript in Bossin case before Board of Transport Commissioners, produced by Counsel for the Bell Telephone Co.

and filed through the
courtesy of the Committee
Chairman.

(Page 1719 follows)

HAROLD GORDON YOUNG

----a Witness previously heard, now recalled, and who, having been already sworn, continues his testimony as follows:

BY THE ACTING CHAIRMAN:

Q. I believe you have some matters you would like to bring before the Committee.

A. Yes, I have the Tariff filed February, 1949, effective March, 1949.

BY MR. JOLLIFFE:

Q. Is that the first Tariff?

A. Yes. I think perhaps the best thing to do is just to read it. I can describe it, although I have not actually used one.

The Tariff reads as follows:-

"A. General

1. Voice recording equipment is apparatus for recording speech or other sounds, for subsequent reproduction. Such equipment may be provided by subscribers and used in connection with the facilities of the Company when connected thereto as specified in this Tariff, subject to the conditions therein.

B. Regulations

1. Voice recording equipment may be connected to the facilities of the Company only through recorder connector equipment. The latter contains a device automatically producing a distinctive recorder tone that is repeated at intervals of approximately fifteen seconds when the voice recording equipment is in use, except that in the case of full period private line telephone service, recorder connector equipment which does not contain the automatic tone device may be used at the subscriber's option.
2. Permanent connection of voice recording equipment is to be made only through recorder connector equipment provided, installed and maintained by the Company.
3. Temporary connection of voice recording equipment for a period not to exceed 30 days may be made for a trial or demonstration purposes through portable recorder connector equipment provided by a recorder manufacturer or his agent, subject to the condition that such recorder connector equipment is obtained from and maintained by the Company and is connected with

the telephone line through one or more jacks installed on the line by the Company for that purpose.

4. Recorder connector equipment is not installed in connection with public and semi-public telephone service.
5. The voice recording equipment is to be so arranged that at the will of the user it can be physically connected to and disconnected from the facilities of the Company, or switched on and off.
6. The operating characteristics of the voice recording equipment must be such as not to interfere with any services of the Company. Upon notice from the Company that such equipment is causing or is likely to cause hazard or interference, the subscriber is to arrange for such changes as are necessary to remove or prevent such hazard or interference.
7. The Company may interrupt the connection at any time in order to protect any of its services because of departure from the foregoing requirements.
8. The subscriber shall indemnify and save the

Company harmless against claims for libel, slander or infringement of copyright arising from the improper use of material transmitted over its facilities and recorded; against claims for infringement of patents arising from combining with, or using in connection with, facilities of the Company, apparatus or systems of the subscriber; and against all other claims arising out of any act or omission of the subscriber in connection with facilities provided by the Company."

As I say, that is effective March 13th, 1949, and the rate for recorder equipment is \$2.50 per month.

EXHIBIT NO. 98

General Tariff, Bell Telephone Company of Canada, re Voice Recording Equipment as produced and identified by the Witness Young.

Here is a picture (indicating) of what the recorder equipment look like. It is there on the side of the desk (indicating).

I shall be very pleased to file the Tariff and the photograph.

EXHIBIT NO. 99

Photograph of Recorder Equipment Identified by the Witness Young.

When that is installed in an office, and you call me, I would hear "beep, beep, beep" every fifteen seconds. That is a notification that recording is taking place.

BY MR. GRUMMETT:

Q. That is only providing there has been no alteration or interference with the mechanism, Mr. Young?

A. Yes, Sir.

Q. It would be quite possible to cut out the warning signal?

A. No. The recorder is connected there with a recorder connector, and if you cut it out, you cannot record.

I presume we will find some people "monkeying" with it, but I do not think they can do that, and we not find out.

BY MR. HOUCK:

Q.. Are there many being used?

A. I understand there are about twenty in Toronto. There are not many around the rest of the country.

BY MR. JOLLIFFE:

Q. The equipment is your equipment?

A. The recorder connector only. The dictaphone people sell the apparatus and to demonstrate it, they get a portable recorder connector from us, and if they want to

demonstrate the equipment in your office, they bring this in, and they can carry it around with them, and we are asked to install and check it, and see that it is connected, which we do.

Q. Does the Bell Telephone Company make the installation or does the dictaphone company?

A. We make the connection of the recorder connector.

Q. Suppose the dictaphone is connected without the recorder connector?

A. That would be an infringement of our service, and if we found such a thing, we would promptly disconnect.

Q. Have you found such?

A. No, I have not.

Q. There were installations made, were there not --

A. Yes. We had to defend it prior to that Tariff. There may be some now, I do not know of any personally. We are interested in having the subscriber called notified that it is being recorded, and we were able to maintain that position.

Q. That is the interesting point about it; the other party on the line should be put on notice that he is being recorded?

A. Yes.

Q. From the public's point of view, that is

an interesting point?

A. Yes.

Q. I do not see anything in the record that it is recording a telephone conversation.

A. No, but I think you will agree that from that installation (indicating) you will have the knowledge. We were having to chase these people who make these recordings all the time, for awhile. They were very anxious to sell them. We dealt with them, still trying to sell them one of these recorder connectors. I do not think now, that we are doing that. They were taken to court in the States.

Q. You took some of them to court?

A. Across the line they were taken to court and it was threshed out there.

Q. I suppose a number of different manufacturers are interested in this?

A. Yes.

Q. Apart from the device which is connected with the telephone itself, it is possible to record a telephone conversation without any physical connection?

A. That is possible, yes. The only alternative is

where we find any such device, is to take some action to see that they do not use it. That is very hard to do.

BY MR. HOUCK:

Q. Mr. Munnoch said that in the States where they are listed in the telephone directories, there is a star opposite the name?

A. On that point, I don't know. I think we would be in there, if that was the case. But even they do not use it all the time. It would only be on occasion. I never heard of that, and we make up the connectors.

Q. And the cost of these recorder connectors is only \$2.50 per month?

A. Yes.

Q. That is apart from the dictaphone equipment?

A. That is right.

Q. Do you happen to know in what year this process was initiated?

A. I would take a guess that it was about 1946 or 1947, that it became active. I have no specific knowledge of when it started.

Q. There is no legislation on it?

A. Not that I know of, no.

Q. Except -- of course, your Tariff is approved

by the Board, I suppose?

A. That is right.

BY MR. HOUCK:

Q. Is that used in radio stations?

A. Yes. I think some radio stations have that. I have heard recordings broadcast, where the "beep" signal was in it. This fellow who reports the sports in the mornings had it at the Leaf's training camp down south and he made a broadcast which was recorded and it had the "beep" signal in it, so the radio station must have had a recorder. I have heard that several times.

BY MR. DO NER:

Q. One not familiar with that, would not know what the signal meant?

A. No. There would be some publicity on it. I would think the first time you get a call where you hear the "beep", you would ask about it, and you would get to knowing about it in that way.

I do not know how effective an advertisement on the part of our Company, to inform the public, would be. It would have to be concise and short.

BY MR. JAMES:

Q. That recording machine is the same as we use

in this building for dictating?

A. Yes.

Q. It is the same machine?

A. I think it is a little later model - a little different. As a matter of fact, I have not used one of these, and I cannot speak as to how they work.

The Bell Telephone system has developed one to see if they can make an improvement on it. I tried it, but I did not like it very much -- the present model.

BY MR. DOWNER:

Q. Has the Bell Telephone Company a leased wire or circuit to the Racing Form in Toronto?

A. I think we have. It is the British United Press which goes to all the newspapers in Ontario and Quebec, and the radio stations, and I am pretty sure it goes to the Racing Form.

Q. You have no wire direct from the United States to the Racing Form?

A. No; the British United Press - I think their home office is in New York.

BY MR. JOLLIFFE:

Q. Yes, the U.P. sports wire is in the United States.

A. This is the British United Press.

Q. The British United Press, ^{head} office is in Montreal?

A. Yes.

BY MR. DONNER:

Q. You are not aware of where they have installations, where they can send out from the Racing Form, information such as we have heard about here?

A. I presume they can transmit on that British United Press wire. Other than that, I do not know.

BY MR. JOLLIFFE:

Q. It does occur to me, Mr. Young - you may not be able to tell us - that there is information in the Racing Form - very full information - which must have come by wire.

MR. DONNER: Somehow or other.

MR. JOLLIFFE: Yes. It is a good deal more complete than that which would be carried by the United Press Sports wire?

A. I think they can carry very full information. The paper has entries, and so forth, in it, which/they get over that wire.

Q. I think the Racing Form must have a special wire.

M.R. DONNER: I think so.

BY M.R. JOLLIFFE:

Q. I am quite familiar with the news service wire, and it would not be as complete as what the Racing Form has.

A. I have no knowledge myself of what is carried in it.

Q. We are told it is not a Canadian National Wire; it may not be a Bell Telephone Company wire; it may be a Canadian Pacific Wire, as far as we know.

BY M.R. DONNER:

Q. What about the American Telephone and Telegraph?

A. That would be ours.

M.R. JOLLIFFE: The A. T. & T. would be hooked up with the Bell.

BY M.R. DONNER:

Q. Have they a lease?

A. They serve the British United Press, and we connect with them.

MR. JOLLIFFE: My guess is -- and it is only a guess -- that the Racing Form has a wire connected with the facilities of the other Racing Form offices of which there are a number in the United States.

MR. DONNER: They are all in one group with branches in the United States, Canada and Mexico.

MR. JOLLIFFE: My expectation would be they carry their own service and they rent the wires from some wire company .

THE WITNESS: They do not rent it from us.

BY MR. JOLLIFFE:

Q. And the Canadian National says it is not theirs?

A. I think it must be the C.P. The Provincial Police gave us some information on the Racing Form quite recently, but the only thing we had was "Racing Form".

STAFF INSPECTOR TOMLINSON: I know they have a telegraph wire, but I have never been able to check on it. I would like to know more about it.

MR. DONNER: I think it would be a good idea, since the Racing Form seems to control the whole picture and be the key and as they are a big outfit, I would like to suggest we subpoena the Racing Form

people, and have them come here.

MR. JONES: I think we should.

MR. JOLLIFFE: I would like an explanation of the statement which appears on their masthead, "Official Newspaper of the Canadian Racing Commission", which I very much doubt.

MR. DOWNER: I would like to move we subpoena the publishers of the Canadian Racing Form in Canada.

MR. GRUMETT: I second that motion.

(Motion carried unanimously)

THE ACTING CHAIRMAN: We will have them here at the July sittings, if at all possible. Now, I understand that Mr. Young is in somewhat of a hurry--

BY MR. GRUMETT:

Q. We have heard mention by all of the police officers, I believe, of telephones being changed around. I am at a loss to understand how these telephones can be changed from one premises to another without the Bell Telephone Company being aware of it and taking steps to prevent it.

I know with the small private companies, if anybody interferes with their equipment, there is trouble with someone, and they take steps to see it

does not occur again.

During all of the evidence of the police officers, we have heard evidence of telephones transferred from place to place. Would your maintenance men with your company know nothing whatsoever about the changes?

A. The first time we would know about it would be when there was some reason to visit the equipment -- a trouble call, or something. I have no doubt when we are called because there is trouble , when we get there, everything is where it should be.

BY MR. JAMES:

Q. You heard Deputy Commissioner Doyle speak about the suggestion that the Bell Telephone Company took a deposit from Howard Kerr for telephones. Do you know anything about that?

A. We take deposits where we think the credit information warrants them. We take deposits from people whose credit we do not know, until we do know it. But only to the extent that the service occurs.

BY MR. GRUMETT:

Q. Now, Mr. Young, previously you introduced some forms. One was a form of application. It is a very general form, and nothing is

said about the type of business in which the subscriber is going to engage, but in checking over the evidence given before the Board of Transport Commissioners in the Bossin case, I find that this form of contract is very much more elaborate than the one in general use.

Why was that done in the Bossin case?

A. Because we knew that Bossin had been charged.

Q. You prepared a special form for Bossin?

A. Yes.

Q. In the three contracts?

A. Yes.

BY MR. HOUCK:

Q. Do you do that with every book-maker?

A. Yes.

BY MR. JOLLIFFE:

Q. The only question which arises is this; do you not think it would be better if the normal application cards, of which you have filed a specimen, contained a statement by the applicant that the telephone is to be used for a lawful purpose?

If you recall the wording of that card, it is purely formal wording, it just applies for the service, and that is about all goes into it.

What I have in mind is, it would not be asking

very much, if your formal application forms could contain a statement by the applicant as to the nature of his business?

A. There is room on there to put it on.

Q. The nature of his business, and that the telephone is to be used for lawful purposes?

A. We would not want to ask that of every citizen.

Q. Well, it is not asking very much.

THE ACTING CHAIRMAN: Any law-abiding citizen would not question that.

MR. JANES: You might have a clause in there, that if he does not use it for lawful purposes, you can take it out.

MR. JOLLIFFE: This says:

"The under-signed requests the Bell Telephone Company of Canada to furnish, subject at all times to lawful rates and regulations as approved by the Board of Transport Commissioners for Canada, and as on file at the Company's business office, telephone service and equipment as detailed herein, and as may be ordered from time to time either orally or in writing, and agrees to pay all toll and other charges in accordance with said rates and regulations."

BY MR. JANES:

Q. Is there not a clause there which states it is to be used for lawful business?

A. No. But anybody we know who has been convicted or charged --

BY MR. JOLLIFFE:

Q. The other clause is a special clause?

A. Yes.

Q. Which the ordinary applicant is not called upon to sign?

A. That is right.

BY MR. JANES:

Q. I thought there was a clause there that he had to answer and say it was to be used for a "legal business"?

A. No, not in the ordinary contract.

Q. Not in the ordinary contract?

A. No. I have not seen the application form of many other companies, but I have seen some, and they are very similar.

BY MR. JOLLIFFE:

Q. I have no doubt they are very similar.

One thing which occurs to me, Mr. Young, is that for the protection of your own company you might

desire a clause of that sort, because if the information turned out to be false, you could terminate the contract.

A. I think we could do that with this wording on (indicating). This says:

"Subject at all times to lawful rates and regulations as approved by the Board of Transport Commissioners for Canada."

Q. But they have nothing to do with the Criminal Code? All the applicant is agreeing to do there is to comply with what might be called the "laws of your company"?

A. Yes.

Q. They are not agreeing to observe the provisions of the Criminal Code.

THE ACTING CHAIRMAN: Not at all.

BY MR. JANES:

Q. How long was Kerr in business down there? You must have held his deposit for quite a long time.

A. I do not know, Mr. Janes, how long he was there.

MR. JANES: Have you any idea how long he was in business, Inspector Tomlinson?

STAFF INSPECTOR TOMLINSON: No, I do not know. I can remember back four or five years ago.

BY MR. JAMES:

Q. Usually he establishes his credit in that time and asks that the deposit be returned to him?

A. Oh, no.

MR. JULLIFFE: He was running a big account.

THE ACTING CHAIRMAN: It was an ordinary business.

MR. JAMES: I have tried to follow that line of reasoning, and I put it up to Mr. Munnoch, and he stated they did not establish credit.

THE WITNESS: They do. It all depends on the conditions. If we do not know anything about him, and he is going to get a lot of equipment, we will do that. However, there are very few of those. I do not believe there would be one half of one percent of our subscribers who would be called upon for a deposit.

BY MR. JAMES:

Q. I do not suppose that one half of one percent of your subscribers are book-makers?

A. It is not book-makers only.

Q. I cannot understand any company putting this equipment in for a complete stranger -- as this

man evidently was -- without some credit arrangements.

Mr. Munnoch has told me twice there was no deposit asked for.

THE WITNESS: I do not think there was a deposit from Kerr. I do not remember seeing it.

BY MR. JANES:

Q. Deputy Commissioner Doyle suggested there was.

A. I do not think we had a deposit from him.

Q. You seem to be quite happy about allowing the telephones to go, and taking no action to protect the telephones.

A. I do not understand that question.

Q. There were a number of telephones disappeared, according to Deputy Commissioner Doyle's evidence, and he said, as far as he knew, the Bell Telephone Company made no effort to recover the telephones.

A. I would not say that. We do make every effort to recover them, but how will we find them? If we find them, we take the service out.

THE ACTING CHAIRMAN: I think we will adjourn now until two o'clock.

MR. JOLLIFFE: Yes, that will be all

right.

---The witness retired.

---Thereupon, at 12.30 o'clock p.m., the further proceedings of this Committee adjourned until this afternoon at 2 of the clock.

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A F T L R I C O E S L S S T C R

Toronto, Ontario,
Friday, June 15, 1951,
At 2 o'clock p.m.

---The further proceedings of this Committee reconvened pursuant to adjournment.

---All parties present.

---Same appearances as heretofore noted.

THE ACTING CHAIRMAN: Gentlemen, will you please come to order.

I believe Commissioner Stringer has something he would like to bring before the Committee.

COMMISSIONER STRINGER: Yes, Mr. Chairman.

THE ACTING CHAIRMAN: He will be glad to hear you.

WILLIAM HOLEBROOK STRINGER,

Commissioner, Ontario Provincial Police, a witness previously heard and now recalled who, having been already sworn, continues his testimony as follows:

BY THE ACTING CHAIRMAN:

Q. Will you proceed, Commissioner?

A. Mr. Chairman and gentlemen --

MR. JAMES: You are starting off very nicely, anyway.

THE WITNESS: There were some criticisms given by the counsel of the Bell Telephone Company to the effect that the Commissioner of Police of Ontario should not hold the office of Justice of the Peace -- or words to that effect.

As the matter deals with law enforcement, I think I should explain to you gentleman what that position means, and what it entails.

On the 6th day of September, 1939, I took the oath of allegiance and office before Mr. C. F. Bulmer, Clerk of the Executive Council, and at that time the Ontario Provincial Police force functioned under the provisions of the Constables Act, R.S.O. 1937, which reads similarly to what now appears in the Police Act, R.S.O. 1950.

Section 39 of the Police Act, 1950, reads as follows:

"Unless otherwise provided by Order-in-Council, the Commissioner shall be ex officio a magistrate for the Province of Ontario, and shall have and may exercise and perform the powers and duties of a magistrate, and may take informations and issue warrants or

summonses in any city, town, county, provisional county, or provisional judicial district, or other locality in Ontario, and may make the same returnable in the city, town, county, provisional county, provisional judicial district, or other locality in which the offence charged is alleged to have been committed.

(2) The jurisdiction conferred by sub-section 1 may be exercised by the Commissioner, notwithstanding that there is in the locality in which he acts, a magistrate who, under the Magistrates' Act or any other Statute, has jurisdiction exclusive or otherwise."

That is, I am not a Justice of the Peace, I am, as I say now, a magistrate.

BY MR. JOLLIFFE:

C. By statute?

A. By statute, sir. That was an appointment by law, and passed through the Legislature of the Province of Ontario, and has been in effect for many years. The previous Commissioner had the same rank as myself, and I believe General Elliott held the same rank, to the best of my recollection.

Up to the present there has been no complaint.

Now, you may say, "What do I do in connection with that?" It is all pretty well set out in Sub-section 1 of Section 39:

"And perform the powers and duties of a magistrate, and may take informations, and may issue warrants or summonses in any city, town, county, provisional county, or provisional judicial district or other locality in Ontario."

And so on.

In the first place, I do not dispose of any criminal cases or any offences under the Statutes of Ontario. But I do these things; I administer the oath of allegiance or office not to disclose the secrecy of the dealings with the operations of the radio equipment, to members of the Ontario Provincial Police Force.

Administration of the oath of office to special constables, appointed under Section 59 of the Police Act, 1950; for instance, such as those who may be selected by the Hydro Electric Power Commission, where they require special constables. That is done on written authority by the head of the Commission, or the head of the industries interested.

I take informations and issue summonses re
the Ontario Securities Commission.

The backing of warrants to apprehend under
the provisions of the sections of the Criminal Code.
This is done on what we call "Form 8", taking the
affidavit and service of summonses.

Those are the general duties which I perform,
as a magistrate. Section 56 of the Police Act reads:

"(1) The Commissioner, a county court judge,
a district court judge or a magistrate, may,
by written authority, appoint any person to
act as special constable for such period,
area and purpose as to him may seem expedient"

and so on. That is the authority for swearing in
special constables.

Now, in addition to that, Deputy Commissioner
E. T. Doyle and Deputy Commissioner A. Moss, of the
Provincial Police Department, are Justices of the
Peace. They have been appointed by Order-in-Council,
and they perform all the duties I have related, with
the exception that they cannot swear in special con-
stables, because they have no authority, but they can
swear in recruits to the Ontario Provincial Police,
and they can take informations, issue orders for search,
and issue warrants for arrest, and duties similar to

mine, through the province. That I think is for convenience purposes and for the betterment of law enforcement.

For instance, at the present time, one of the deputies, Deputy Commissioner Moss, is away on vacation, and is out in the Province of Alberta. That leaves Deputy Commissioner Doyle and myself to take over, but we can handle the traffic at the present time, and should one of us be taken ill, or die, there would be two at least remaining.

Briefly, those are the duties I perform, and I would say, gentlemen, that the office of Justice of the Peace for these two men should be retained and there should be no change, as far as I am concerned.

We are called out, sometimes in the middle of the night, to take informations, issue warrants to search, issue warrants of various types -- and summonses, too -- and we are only two glad to do it. We are doing it in the interests of justice. If these powers are taken away from us, it will put us on a very bad "spot".

At no time has there been a complaint. The first complaint I have heard was from the counsel of the Bell Telephone Company, and I do not

think he has very much to complain about.

BY MR. JOLLIFFE:

Q. Mr. Commissioner, it has never been suggested you should sit as a magistrate at the trial of an accused?

A. No, sir. I have sat on two international extradition cases, for the convenience of the Crown. One in the Eastern part of the province -- I believe it was at Winchester -- and the other at Hamilton. That was some years ago, but then I would act similarly to a magistrate sitting on a preliminary enquiry. The evidence was all taken in narrative form, and bound and sent to the British Consul, wherever the man was being held for extradition.

Q. I think what you say about the other functions of a magistrate is perfectly correct, that you need these powers, and I also think it would be unwise to ask the Provincial Police Commissioner to sit on trials of accused people.

A. I agree with that, Mr. Jolliffe. I do not want to.

In addition, under the Fire Marshal's Act, we find the following:

"(4) For the purpose of any inquiry or

investigation which it is his duty, or which he has the power to hold under this Act, the Fire Marshal shall have and may exercise all the powers which may be conferred upon a Commissioner appointed under the Public Enquiries Act.

(5) (1) The Commissioner of Police for Ontario shall have and may exercise the powers conferred upon the Fire Marshal by this Act, or the regulations with respect to the investigation of the cause, origin and circumstances of fires."

Since my appointment, I have not sat at any enquiry under the Fire Marshal's Act.

The Counsel for the Bell Telephone Company did not tell this Committee -- at least I do not think he did -- that under the Royal Canadian Mounted Police Act, Chapter 160 of the Revised Statutes of Canada as amended, Section 12 (1) reads:

"The Commissioner or Deputy Commissioner Assistant Commissioner or Deputy Assistant Commissioner shall respectively have all the powers to Justices of the Peace under this or any Act in force in any province in Canada--"

MR. JOLLIFFE: That gives them the authority of a magistrate.

THE WITNESS: Yes. This goes on:

"The superintendent and such other officers as the Governor-in-Council approves, shall be, ex officio Justices of the Peace."

In some cases-- subject to correction -- I believe they sit in cases in the far north where it is impossible to bring in Magistrates to try these cases.

MR. GRUMETT: That is right. In the north-west territories, the Inspectors of the Mounted Police preside as magistrates.

THE WITNESS: That is right.

We have two district inspectors, who are justices of the peace, two outstanding men. One is C. F. Airey of Niagara Falls, and the other is District Inspector W. A. Scott, of Chatham.

During the war crisis around the year 1942, Inspector Airey was appointed, and it was about that time it was decided to strengthen the Liquor Control Enforcement Branch. But since his appointment, I do not think he has issued any informations or summonses, as far as I know.

The same applies to Inspector Scott at Chatham. In 1945, as I recall the date, Inspector

Scott was stationed at Lindsay, and then District Inspector Phil. Walters was brought into Toronto as Staff Inspector, and held the position as Justice of the Peace, and following his transfer, Inspector Scott was given the appointment.

He has, on occasions, taken informations and issued summonses of a very minor nature. But I would say that these two appointments should not be disturbed. They might be very useful to us, particularly to the anti-gambling squad in that far end of the province.

That is the law, gentlemen.

BY MR. JAMES:

Q. Could Inspector Scott act as a magistrate or justice of the peace, where the Provincial Police wanted to lay a charge?

A. Yes, but he would not act. In cases of emergency only. Inspector Airey would not act either. He would refer the case to a Justice of the Peace or magistrate in Niagara Falls, so I cannot see any objection to those two police officers, and there has been no complaint for any of us holding that rank.

MR. HOUCK: I do not think those powers should be disturbed.

BY THE ACTING CHAIRMAN:

Q. You are in a position to say whether they are necessary or not?

A. Yes, sir. If I felt otherwise, I would say so, and say that they should be abolished. Everyone is entitled to his opinion, but it seems to me we are trying to do a good job under difficult circumstances sometimes --

BY MR. HOUCK:

Q. There has been no abuse of those powers?

A. No abuse at all. I would not sit as a magistrate at a trial.

BY MR. GRUMMETT:

Q. Several remarks have been made by Mr. Munnoch, one, they were matters of opinion, and not complaints. He did not make any specific complaint, nor state any reason why he did not believe the Provincial Police Commissioner should be a magistrate. He merely stated that he should not be, without elaborating or explaining the complaint he was making.

A. That is right, Mr. Grummett. I think he gave that evidence. He said he was speaking in a private capacity, if I remember correctly.

Q. Yes, that is in his brief.

A. I do not know why I was being criticized. I am not too clear why. Because, after all, as far as the appointment is concerned, it has been approved by the Legislature years ago, and when the act was changed, it was put into the Police Act, from the Constables Act, and there it is.

The other appointments, of course, are by Order-in-Council, and their powers are quite limited. They cannot try cases.

MR. GRUMMETT: I do not think the Committee will consider changing that, in any way.

THE ACTING CHAIRMAN: I would not think so.

BY MR. HOUCK:

Q. Under the powers of a magistrate, have you been asked to perform marriages?

A. No, I would not want to start.

BY MR. JANES:

Q. I had the idea that Mr. Munnoch was just making an attempt to get a "rise" out of the Commissioner?

A. This is something I would like to mention, too. There are some other details about this. I have held inquiries under the regulations of the Police

Act dealing with disciplinary code offences, and it necessarily follows you must be either a Justice of the Peace or a magistrate.

BY MR. JANES:

Q. What does that mean?

A. Under oath -- an enquiry under oath. All witnesses testify under oath. We have the right to do that, under the Public Enquiries Act, as laid down in the Police Act.

There were some comments made yesterday --
the
I cannot recall the exact words-- by/counsel for the Bell Telephone Company that we were getting some of our information from people who had an "axe to grind". That is a very unfair statement to make to the people of Ontario -- most unfair. We get our information in the most part from good citizens who want to see the law observed, and that is why they come forward and give us the necessary information, regardless of what the case might be. They are not coming to us with an axe in their hand, or anything like it.

Ever since I have been commissioner -- and the commissioner before me -- I have received many complaints from mothers and wives in connection with their husbands or their sons losing money in gambling

"joints". Do you not think, gentlemen, they are entitled to make complaints?

BY MR. DUNNER:

Q. I do not see any reason why you should not take the complaints, even if they have an "axe to grind".

A. They have legitimate complaints.

MR. DUNNER: I think so.

THE WITNESS: Here is an example. I do not propose to read the names or places in all fairness to the people concerned.

This lady, some years ago, went to an office in this building -- the Prime Minister's office -- with a serious complaint against one of the big gambling "joints" operating at that time in the Township of Etobicoke. We saw the woman. She reported that her son during a certain period of time took a large sum of money from his father's purse and lost it in this gambling den.

The son apparently confessed to his parents what he had done and the mother went to the gambling house in an endeavour to see if she could not get some of that money back, and she needed it -- she was in dire need.

According to her story she was met with abuse,

and told to "go to hell", that they did not ask her son to come there and gamble, and they were not going to pay her a cent.

That is the example of some complaints we have.

BY MR. JOLLIFFE:

Q. Did she give you the address?

A. She did, and we obliterated it. That is an example of some complaints we have. It did not last very long after that.

Q. In that case, the complaint led to its being closed down?

A. Yes. That was the big feature of it. That came in, in conjunction with other complaints pouring in at the same time, coming in from women with broken hearts and homes and the police took immediate action.

I think it is quite unfair to say that we are getting our information from people who have "axes to grind".

One of our primary moves in getting these gambling "joints" is by smart observations on the part of the gambling squad and intense investigations and seeing people -- the right-thinking people -- who can give us some information regarding the commission

of a crime, and that leads to a clean-up of a very undesirable situation, and I think Staff Inspector Tomlinson will agree with me that is the general procedure.

STAFF INSPECTOR TOMLINSON: Yes, sir.

THE WITNESS: The complaints come by telephone, and they come by letter, and they come by interviews.

I think that covers that particular point.

BY MR. HOUCK:

Q. Do you consider your gambling squad is too small at the present time?

A. No, I think they are sufficiently strong at the present time to take care of anything which might crop up. We have the squad here and we have a squad in Windsor at the present time. They will remain there until such time as the situation in Windsor sufficiently clears up and the Board of Police Commissioners say to us, "We can get along fine, without you chaps".

Q. Which will be absorbed into the Provincial Gambling Squad?

A. They all compose our own men in Windsor. They are there primarily to assist the Windsor Police Department, until they are properly formed to take over.

At the same time, we cover Lambton County and Kent County and Essex County. So we are not committed definitely to the municipality of Windsor.

MR. JANES: In my opinion, any citizen who knows the law is being broken and goes to you, is a much better citizen than the Bell Telephone Company which refuses to do that.

BY MR. JOLLIFFE:

Q. Can you quote Scripture on that?

A. When they come and tell us of things, there is no reward handed out.

MR. JANES: And no Scripture quoted, either.

THE WITNESS: No. I have had many hit-and-run cases, where people have come to us. They are fine, decent people, outstanding citizens; they saw this thing happen, and they get the number of the equipment which struck the unfortunate victim, and the result is, we get action.

BY MR. DOWNER:

Q. That is the proper system?

A. I would think so.

BY THE ACTING CHAIRMAN:

Q. They were under a moral obligation, and they carried it out?

A. That is so.

BY MR. DOWNER:

Q. They were acting under their own obligations, as citizens?

A. Acting in a moral sense of right -- ethical conduct.

BY MR. GRUMETT:

Q. As a matter of opinion, what would you think of the statement made by Mr. Munnoch, who said, "If I am standing here and see a man being murdered alongside of me, it is none of my business."

A. I would not like to express to this Committee what I would like to say.

MR. DOWNER: That might be considered to be covered by the old Scripture precept, "Am I my brother's keeper?"

A. Mr. Downer, You are probably more familiar with that, than I am.

Those were two observations I wished to make. One was the criticism of the Commissioner of Police holding the position of a Justice of the Peace. I do not hold that appointment.

Also the action taken by my two deputies as Justices of the Peace.

Is that all, sir?

BY MR. JOLLIFFE:

Q. Have you any comment to make on Mr. Munnoch's argument that your search warrants do not go as far as they should?

MR. JANES: He said they were illegal.

MR. JOLLIFFE: Yes, he did, but he did not mention that, apparently, until on one occasion the Bell Telephone Company moved to quash a search warrant.

I notice in Snow's Supplement, there is a case --

MR. GRUMETT: I have it here. Re Bell Telephone Company, 1947 Ontario Weekly Notes, 651, and 4 C.R.162. There is the reference to where they were contesting a search warrant.

THE WITNESS: Was that a city case?

MR. JOLLIFFE: It might be.

THE WITNESS: I would not know. I never saw the warrant.

MR. JOLLIFFE: The case cited in support of the proposition that the court should quash a warrant, which appears to have been --

THE WITNESS: I know this, about search warrants. When I was an inspector in the C.I.B. we tried to be very accurate dealing with search warrants. During the conspiracy charges -- it must have been twenty years

ago -- of the film companies, we made many searches -- that is, the police did.

I believe the late "Dick" Greer was counsel for the provincial government, and Mr. Humphries was deputy Attorney-General, and they worked together.

Mr. Greer took great pains to make sure that all of our search warrants were drawn up with the greatest of accuracy.

I cannot recall the exact incident, but it seems to me a search warrant came before the court in some way and was ruled out. I do not think it was one of ours.

You cannot say that you have certain information, but for certain reasons you are unable to disclose the identity of the person who gave you the information. So our information in the search warrants said, that he, "John Doe" did see the documents in the office of one of the film companies on a certain date. That was the basis. He knew they were there. Then the search warrant was executed and it was held to be a sound ruling, which could not be upset. You cannot ~~skate~~ around it.

MR. JOLLIFFE: Mr. Munnoch's argument, of course, was that the Bell Telephone Company records to which you had access as a result of search warrants,

are not evidence; that there is no evidence in them as to the commission of an offence. In other words, he did not use this term, but I suppose what he was driving at was that you used it for a sort of "fishing expedition", to get other evidence.

I pointed out to him that the word used in the code is the word "afford".

BY MR. JOLLIFFE:

Q. Have you any comments to make on his argument?

A. I think, if the applications the search warrants are properly drawn up, in accordance with instructions we have received for the drafting of those documents, that it is quite in order.

MR. JOLLIFFE: It might be worth while if I read that section to the Committee:

"(a) anything upon or in respect of which any offence against this Act has been or is suspected to have been committed:

(b) anything which there is reasonable ground to believe will afford evidence as to the commission of any such offence; or

(c) anything which there is reasonable ground to believe is intended to be used for the purpose of committing any offence against the

person for which the offender may be arrested without warrant;"

I think that simply means that the search warrants will have to be very carefully drawn, but I do not believe myself Mr. Munnoch's argument as to the Bell Telephone Company's records.

THE WITNESS: Here (indicating) is a warrant for search and it says:

"Being sought on the ground that it will afford evidence --"

and so forth. That is the warrant we use.

MR. JOLLIFFE: That is the point.

THE WITNESS: Yes.

MR. JOLLIFFE: I suppose it is argueable, but if it were strongly argueable, Mr. Munnoch would have moved to quash one of these, recently.

THE WITNESS: Sometimes it does not take much to upset a warrant. I remember some years ago there was a warrant out for John L. Ward, which appeared on the top part of the warrant, and further down it said, "John V. Ward". There was a clerical error, and it was upset.

MR. JOLLIFFE: It is something like informations; they are often upset by reason of some error or mistake.

THE WITNESS: This type of information (indicating)

and search warrant is used continuously, and we find it very effective, and there is no contest on it at any time, that I know of.

STAFF INSPECTOR TOMLINSON: There has not been, as far as I know, Mr. Commissioner.

THE WITNESS: This (indicating) is an order for search, which the magistrate signs at the bottom.

MR. JOLLIFFE: I think there is one in as an exhibit.

MR. JANES: (Reading): "That you have reasonable grounds to believe --"

THE WITNESS: In the first place, you know things are there. So does the Bell Telephone Company. This (indicating) is the one issued under Section 235 of the Criminal Code. There are some changes there, which have been typed out.

BY MR. JOLLIFFE:

Q. Mr. Commissioner, you issue these orders to search under Section 641 or Section 629?

641 -- Order to Search. The one I read was under as the one 629. I think that was the same one/to which Mr. Munnoch referred.

THE WITNESS: The informations for search warrants are under Section 629. It is under the heading of "Documents". The other is 641.

THE CHAIRMAN: That is right.

THE WITNESS: "Order to Search".

BY MR. JOLLIFFE:

Q. Then, if you issue them, under Section 641, Mr. Munnoch was addressing himself to the wrong Section. His argument was based on Section 629. I do not agree with his argument. Under 641 the wording is different -- it is even wider, I think.

THE WITNESS: 641 deals with betting-houses, as I understand it.

MR. JOLLIFFE: Yes, and also disorderly houses, but under 641:

"---the Justice may, by order in writing, authorize the constable or other peace officer to enter and search any such house, room, or place, with such other constables or peace officers, as are deemed requisite by him, and such peace officer or peace officers may thereupon enter and search all parts of such house, room or place, and if necessary may use force for the purpose of effecting such entry--"

Then they may make seizures. Mr. Munnoch was talking about the wrong section.

THE WITNESS: Under the amendment, 9 (a)

"disorderly" means a "common betting-house, common gaming-house or common bawdy house". That was a new amendment last year.

MR. JOLLIFFE: The point is that Section 641 refers to a disorderly house, and Section 629 is the general section. It is like looking for stolen goods, or other things of that nature.

THE WITNESS: I think, Mr. Jolliffe, some time back you requested information regarding the population of rural areas, and those of municipalities policed by us, under contract. I think that was your question.

MR. JOLLIFFE: What I was seeking was some break-down of the population, for which you are exclusively responsible.

THE WITNESS: Yes, recapitulating the various districts we police 1,274,673 people.

Q. That is, exclusively?

A. Entirely -- oh, yes; by our own men.

Q. There are no municipal forces?

A. No. I think the population of Ontario is around four and one half million. That includes, of course, contract jobs, too.

Now, we have a break-down of the municipalities included in that amount, and we police 2,261,712

people with 182 men.

Q. That is, under contract?

That

A. Under contract, yes sir./ **is** included in the total figure at the bottom of the sheet, of course, the population is changing all the time. If we went at it again, we would probably be out by two figures.

Q. And your strength now is about what?

1100 men?

A. Yes, on March 31, 1951, our total was 1102. It is a little better than that. I am not just sure.

Q. For the purpose of calculating ratios, is it the practice to include civil assistants?

A. No, this is uniformed strength.

Q. I think Chief Chisholm said something about this calculating ratios of the police to the population, and that there is a certain general practice which I understood Chief Chisholm to say, usually included civil people?

A. That may be. I am not too sure of what he said.

Q. He said it was the usual practice to include the civilians.

A. Then we have about one hundred and some odd civilians, but we do not include those in our calculations.

Q. Not with your uniformed strength, of course?

A. No.

Q. You have almost exactly one man to one thousand?

A. Approximately, yes. We are not over-policed. We are just about right, although we have memoranda coming in occasionally from the district inspectors wanting more men, in order to keep the 24-hour service going.

In the summer months, there is an emigration from Toronto to other centres, coming under our jurisdiction, and we have to police them. The actual ratio is less than one in one thousand, because a good many of the provincial police are at a given hour of the day on duty in municipalities which have no police forces, or are on patrol on the highway.

BY MR. JANES: It is less than one to one thousand?

MR. JOLLIFFE: Yes.

MR. JANES: Yes, it would be one to two thousand, because these men are off duty at nights, and sleeping,

And you have a couple of million tourists going in there for the summer?

A. Yes, and a lot of those people come under our jurisdiction, not in the cities particularly. I do not know what the tourist influx would be in this summer, I am not sure.

BY MR. GRUMMETT:

Q. In addition, the Provincial Police Officers are often called in to assist municipal police?

A. Yes, we are doing that all the time for the purpose of good law administration -- and co-operation.

MR. JANES: You would have one officer policing 30,000 to 40,000 people who are on holidays.

BY MR. HOUCK:

Q. Referring back to the pay of the men; they are paid once a month?

A. Yes.

Q. How do they live, the last week or two of that month?

MR. JOLLIFFE: That is true, all though the service.

THE WITNESS: It used to be twice a month, but for the purpose of economy, that was cut out.

BY MR. HOUCK:

Q. Do you have numerous complaints that they have a hard time getting along, the last week or so?

A. Not personally, no. The question does come up now and again by some of the men that they would like it twice a month, but that entails a lot of work in the Treasury Department. It entails the writing of the

cheques, for instance.

There is something I think was left undone. I believe Mr. Jolliffe asked in connection with a memoranda dealing with the sale of ammunition --

MR. JANES: I was the one who asked for that.

THE WITNESS: On May 10th last, Deputy Commissioner Arthur Moss held a conference with Chief Inspector Ward, and the Registrar of Fire-Arms, Mr. Boyd, regarding the matter. They are here (indicating) dealing with the sale of ammunition, and with your permission, I will read this into the record.

THE ACTING CHAIRMAN: Very well.

THE WITNESS: This is a memorandum dated May 10th, 1951, addressed to myself from Arthur Moss, Deputy Commissioner, re "Sale of Ammunition" and it says:

"With reference to our conversation in the marginal connection, I discussed this question at some length with Chief Inspector A. H. Ward, C.I.B., and Registrar of Firearms V. H. Boyd, and they concur with me in making the following recommendations:

SECTION 126(1) OF THE CRIMINAL CODE:

The age of a minor under this section should be raised to at least sixteen

years of age.

In Ontario, licenses to use rifles and shot-guns in accordance with the provision of The Game and Fisheries Act are not issued to anyone under sixteen years of age. This, to my way of thinking, is young enough to allow anyone to go out with a firearm or air-gun. From discussions I have heard at conventions of The Chief Constables' Association, I believe this is also the opinion of most of the Chief Constables throughout Canada."

That has been under discussion at nearly every convention in regard to having the age raised from fourteen years to sixteen years.

This goes on:

"REGULATION 1207 UNDER THE EXPLOSIVES ACT

Having in mind that more people are killed and more damage is done with rifles of decimal twenty-two calibre than all other calibres together, I am firmly of the opinion that this regulation should be amended requiring records to be kept of the sale of all safety cartridges of decimal twenty-two calibre and over

instead of decimal twenty-three calibre
and over as at the present time.

However, I also think that the book in
which this record is kept at the source
of retail sale should be signed by the
purchaser alongside the entry much the
same as in the case of "The Poison Book"
at a Drug Store.

PERMITS TO PURCHASE

This matter has been given considerable
thought since our conversation in this
connection and the matter of making it
compulsory to have a permit to purchase
revolver ammunition seems to be a very
drastic change and I do not think,
having regard to conditions throughout
Canada, we would obtain the support
necessary to make this work.

I do, however, think and make the suggestion that legislation be made making
it compulsory that; before any person
(other than military or police authorities)
be allowed to purchase ammunition
which could be used in a revolver or
pistol, he be required to produce to

the vendor, at the time of the purchase, his registration certificate covering the type of a revolver or pistol which would use the ammunition he wishes to purchase.

As stated, the above is the considered opinion of Chief Inspector Ward, Registrar of Firearms Boyd and myself."

EXHIBIT NO.99: Memorandum, Moss to Commissioner, May 10th, 1951 re sale of ammunition, as identified by the witness Stringer.

That was given very careful consideration by these men, and this (indicating Exhibit 99) is the result of the deliberations, taking everything into consideration.

BY MR. JANES:

Q. That would help quite a bit if they had to show their permit. That (indicating Exhibit 99) just mentions ammunition which can be used in revolvers.

A. And rifles of .22 calibre.

Q. It does not mention Sten guns, or anything of that kind?

A. No, sir.

MR. JOLLIFFE: Well, a man would not have a Sten gun.

MR. JANES: No, and he cannot get any ammunition.

THE WITNESS: If he had a Sten gun, he would try to steal the ammunition.

MR. JANES: There are lots of places where they sell guns, the Jew shops, and these pawn shops.

MR. JOLLIFFE: I think this Committee will have to say something about that, that ammunition can only be sold for guns which can be owned.

MR. JANES: I do not see how they can justify the sale of ammunition for illegal guns.

MR. JOLLIFFE: Or even having it in stock.
A. If it is in stock, it is liable to be stolen. It is illegal to have a .45. If it is registered and in your possession, you can buy the ammunition for that at any ammunition store. The ammunition for a .45 calibre automatic will function in a Rising machine gun or a Thomson machine gun.

MR. JANES: That is what makes it dangerous.

THE WITNESS: At the same time, the .45 calibre automatic pistol is a deadly weapon. As the memorandum points out, there seem to be more deaths from rifles of .22 calibre.

MR. JOLLIFFE: Of course, there are many more of them in use.

THE WITNESS: Yes, and they cannot be held

liable if they have a .22 rifle without a permit.

MR. JAMES: I think air guns should be barred entirely.

THE WITNESS: They are a very destructive gun.

MR. JAMES: Yes, putting out eyes and things like that. When boys get to using those guns, they can do a lot of damage.

BY MR. JOLLIFFE:

Q. Commissioner Stringer, what is the distinction between a safety cartridge and others?

A. I think I have it defined here (indicating) in one of these records, as a cartridge entirely encased in brass.

BY MR. JAMES:

Q. A great amount of the ammunition now has brass jackets on them?

A. A safety cartridge, under the Explosives Act, 1946, the interpretation clause, means:

"Cartridges for guns, rifles, pistols, revolvers and other small arms, of which the case can be extracted from the small arm after firing, and which are so enclosed as to prevent any explosion in one cartridge being communicated to another cartridge."

That is entirely encased in brass.

BY MR. JOLLIFFE:

Q. I suppose the sporting goods stores do not sell any other cartridges?

A. No.

Q. That is all they sell?

A. That is all they sell, yes. There is no sale for anything else.

MR. JOLLIFFE: For the information of the Committee, the case Mr. Grummett pointed out in 1947, was by way of a motion before Mr. Justice McRuer, Chief Justice of the High Court. It was an application by the Bell Telephone Company to quash a search warrant in respect of an alleged betting-house at 217 Church Street, Toronto, and Mr. Munnoch and Mr. F. A. Burgess appeared for the Bell Telephone Company, Mr. Common, K.C., and Mr. F. L. Fisher, K.C., for the magistrate. The warrant was quashed at the request of the Bell Telephone Company on technical grounds.

MR. GRUMMETT: It did not set out the necessary information, that it "afforded" and so forth. The Justice in his remarks pointed out clearly that the warrant would have been correct, if it had been set out. That warrant was defective.

THE WITNESS: Yes.

BY MR. JOLLIFFE:

Q. It looks like a Toronto city case?

A. I think it was a city case. I do not think we had that.

MR. JOLLIFFE: It has a very familiar ring, considering the evidence we have before us. It says:

"The contents of a search warrant are set out in the reasons for judgment.

In a Statement of Facts agreed upon by counsel, it was stated that the police suspected that the premises in question at 217 Church Street, in Toronto, were being used as a common betting-house, but that they were only what is known as the 'front end', and that bets placed there were recorded by telephone with a 'back end', the location of which was unknown to the police.

The object of the search warrant was to enable police officers to trace telephone calls placed from 217 Church Street, and thus, by consulting the Telephone Company's records, to establish the location of the unknown premises.

It was further stated that the information was to be obtained without removing the things mentioned in Paragraph (b) of the search warrant, and by merely watching them in operation, that there was no intention or desire on the part of the police to 'tap wires', or listen to telephone conversations, but only to trace the calls as stated above."

In that case, at least, the Bell Telephone Company moved to quash the warrant.

M.R. JONES: What date was that?

M.R. JOLLIFFE: May 29, 1947.

M.R. JONES: Apparently that has been going on for a long time.

M.R. JOLLIFFE: The break-down of population is going in as an exhibit?

THE JUDGE: You may have it, sir.

EXHIBIT NO.100: Break-down of population policed by the O.P.P. as identified by the witness Stringer.

BY M.R. JOLLIFFE:

Q. And I think we would like to have the other one regarding the contracts?

A. Yes.

Q. If you have a spare copy, may we have it?

A. Yes.

EXHIBIT NO.101 Statement re
Contracts with municipalities
as identified by the witness
Stringer.

THE WITNESS: I do not know, sir, but at a previous hearing I covered quite a bit of territory. If there are any further questions, I would be only too pleased to answer them.

MR. JOLLIFFE: I would like to ask the Commissioner about something which we may have discussed with Mr. Magone, but I do not think we did with the Commissioner, and that is with reference to capital punishment.

BY MR. JOLLIFFE:

Q. I do not think we asked you any questions about that?

A. As to whether I am in favour of it?

Q. I wonder if you would care to express an opinion, from your long experience as a police officer.

A. To be quite frank, as the law now stands, dealing with capital punishment, I think it should stand, although I think there should be a central place of execution.

Q. For the province?

A. Yes. In a great many jails in Ontario, the walls are not high enough to conceal the condemned man, as

he ascends the scaffold, which is some thirteen feet from the surface of the ground. That means they have to put tarpaulins up around the walls. In one case I think they had cloth hanging up to conceal it from people passing by on the street, that is, what was about to take place.

I think that type of system is out of date, and is most gruesome, although I still believe in capital punishment, but it should be done at a central place of execution. That is my opinion, sir.

BY MR. GRUMETT:

. In addition to that, do you not think it has a very bad effect on the residents of the smaller towns, in which the execution takes place.

A. Yes.

Q. Under our present law, the execution must take place in the county seat?

.. That is right, or the district seat.

Q. Where the trial takes place?

A. Yes.

Q. And quite often this county seat or district seat is a small town, and it creates a very bad effect on the residents?

A. There is a lot of comment following an execution. I recollect one case I investigated with other officers,

--a case of murder, by a man named Jackson, at Parry Sound. The condemned man was hung in that jail, and it was necessary to build up the tops of the walls all the way around, so it could be done without people looking on from the roadway.

BY MR. JAMES:

.. Did I not see in the paper the other day they had a hanging in London quite recently, and they got on top of the houses to see what was going on.

. I think the system is out of date. It should be done at a central place.

BY MR. GRUMETT:

.. And another point, Mr. Commissioner; do you not think that it would be better to change our law so that the date of execution is not fixed by the judge as a definite date, but to say, "between such-and-such a date", about a week apart, that the execution will take place. Therefore, there is not the tension on the part of the population, as there is when they know that an execution will take place at approximately an exact minute. They have not that tension, because it may occur on the very first day after the period set by the judge, or it may occur

three or four days later.

A. There is something in that.

Q. That is the British system. Do they not carry out fixed sentences in Britain, on that basis?

A. I am not too sure of that. But that has some merit. In small places, the whole populace gets to talking about the proposed execution, which is going to take place on a certain date.

Q. But even if we had a central place of execution, do you not think the suggestion has merit that the actual date is not fixed by the presiding Justice? The Justice would say "between such-and-such a date", leaving a period of three or four or five days between?

A. I do not know whether I should properly comment on what a judge might do in a capital case, sir, but it seems to me, if there is going to be a central place, preferably it should be in Kingston Penitentiary. I do not know whether that is a proper observation or not, because it might upset the inmates.

Q. I think it should be at some place where there are no other prisoners?

A. That might be the best way. It does affect the inmates.

Q. And where the scaffold itself is a permanent fixture?

A. Yes, because the hammering connected with the installation of the gallows is something the man can hear.

Q. And the prisoner is nearly always within hearing of where the gallows are being erected?

A. Yes, that is right. I am more in favour of the electric chair.

MR. HOUCK: So am I.

BY MR. JOLLIFFE:

Q. I understand there are six or eight American states where they do not have capital punishment.

A. That is right. I believe Michigan is one.

Q. I think Michigan is one, and Rhode Island is another?

A. I think so.

Q. In your meetings with the American officers, have you heard any complaints?

A. I have heard them say, "It is too bad we have not got capital punishment here" in connection with a case they were discussing.

Q. In connection with a particular case?

A. Yes. That has happened in Detroit, Michigan. If

they convict an accused man of murder, it simply means life, and life in many cases means only fourteen years.

Q. I can understand it in that connection, but have they given you any evidence that there is any more of that sort of thing in Michigan or in Rhode Island, than there is in states like New York or Illinois.

A. I have not heard it discussed.

Q. Certainly the death penalty did not seem to be much of a deterrent?

A. No.

Q. Even now, on the strength of the figures you gave us.

A. They were Mr. Chisholm's figures.

Q. On the strength of the figures which Chief Chisholm gave us, they would have to have a hanging about every day, in Illinois?

A. That is so.

THE ACTING CHAIRMAN: And then some.

BY MR. GRUMMETT:

Q. Mr. Commissioner, what do you think about the question of the different degrees of murder? At the present time, we only have one degree of murder, and the punishment is death?

A. That is right.

Q. What is your opinion in regard to fixing degrees of murder, such as first or second degree murder, and the punishment for second degree murder could be life imprisonment, or such sentence -- moderate sentence -- as the Justice might see fit to impose?

A. I would not like to answer that question, Mr. Grummett, because it seems to me that is quite a legal question, as it applies to the Dominion of Canada, although it is carried out in the States of the Union below us -- or many states.

Q. Do you not think, Mr. Commissioner, there are many murderers who are perhaps guilty of murder, but a sympathetic jury will return an acquittal, rather than convict?

A. That has happened.

BY MR. JOLLIFFE: And is it not increasing?

THE ACTING CHAIRMAN: In too many cases.

BY MR. GRUMMETT:

Q. It is becoming very, very prevalent in Ontario to-day, and if we had a provision in our law whereby the degree of murder could be fixed, do you not think that punishment would be meted out in a greater number of cases?

A. It might be. That has merit, too.

MR. JOLLIFFL: I do not think there is any doubt about that. Sometimes a trial results in an acquittal, where there should not be an acquittal.

MR. JANES: That is quite true.

THE ACTING CHAIRMAN: There is a wave of sympathy.

MR. JANES: I think the last two murderers we had up in Lambton were acquitted.

THE WITNESS: Take the case of a woman who has been beaten up by her husband continually, and she is charged with murder, after she shoots him in one of those attacks. She might get off.

MR. GRUMETT: And she nearly always does.

THE ACTING CHAIRMAN: Just a wave of public sympathy.

MR. JOLLIFFL: If you want to consider culpability, a woman in that situation is probably much less culpable than many of the motor manslaughter cases.

A. Yes. Now, recalling cases of arson; that used to be punishable by life imprisonment.

Section 511 of the Criminal Code, subsection 1, reads:

"Every one is guilty of the indictable offence of arson and liable to imprisonment for a

term not exceeding fifteen years who wilfully sets fire to any building or structure, whether such building or structure is completed or not, or to any stack of vegetable produce or of mineral or vegetable fuel, or to any mine or well of oil or other combustible substance, or to any ship or vessel, whether completed or not, or to any timber or materials placed in any shipyard for building or repairing or fitting out any ship or to any of His Majesty's stores or munitions of war."

Previously, that was life. Previously to that, we found difficulty in getting convictions. For instance, a man might set fire to an old building with some straw in it, not worth very much, but, nevertheless, it was the crime of arson, and he did it maliciously, and you would have a very difficult time getting a penalty against that man, particularly when the jury might be informed that there was or could be a life sentence attached.

The danger of that is less, when the penalty has a maximum of fifteen years.

That is something along the line you were discussing, Mr. Grummett, about degrees of murder.

In the first place, the penalty was a little too severe on this.

MR. GRUMMETT: The penalty is still too severe in certain murder cases, for the nature of the crime. Under our law, the authorities have no option, but to lay a charge of murder. If we had degrees of murder, they could provide that the verdict could be brought in of either first or second degree murder.

THE WITNESS: Yes.

BY MR. GRUMMETT:

Q. For instance, take the fact that we have had during the past two or three years a large number of youngsters shooting their fathers, and they would plead that the father was drunken and abusive, and they were acquitted.

Whereas no one is going to say that they do not deserve some punishment for having shot and taken a life.

There was another incident I recall -- I do not know just how far back it went -- but it was in connection with dealing with theft from His Majesty's mails.

MR. JOLLIFFE: The Code was amended and the penalty reduced.

THE WITNESS: Yes. If a person stole a postal card of no particular value, he had to take the punishment. The magistrate had no other option.

BY MR. JOLLIFFE:

Q. The point is, this penalty would have to correspond to some degree with public requirements or public opinion. There was a time about a century ago when capital punishment would be imposed for all kinds of offences. Juries finally stopped convicting for stealing a horse, because they did not want to see a man hanged.

A. The Newgate calendar is full of those crimes.

MR. JANLS: We have had three or four up in our country, and they were acquitted. I am not saying they should have been acquitted; they were both fighting, and one just got his knife in the right place.

MR. JOLLIFFE: If the public gets the idea that it is all right for a boy to shoot his father every time the old man gets drunk, there will be all kinds of trouble.

THE WITNESS: There is no doubt about that.

MR. GRUMMETT: Especially when, in nearly every case, the boy is acquitted of a charge of murder.

THE WITNESS: Yes, and it also leaves the way open for the defence to be brought forward on that basis when it is fictitious. The crime may have been committed for some other reason altogether, but to save the boy's life, that defence can be brought forward, in the knowledge that he will be acquitted, if he can produce evidence that he committed the crime for the protection of his mother, or some other member of the family.

MR. JOLLIFFE: There is another type of offence, about which I would like to ask the Commissioner, and that is in regard to what is known as "sex offences".

BY MR. JOLLIFFE:

Q. Are you satisfied that the present method of dealing with sex offenders -- the method by which they are prosecuted for rape or indecent assault, or attempted rape, or whatever it may be, when, if convicted, they are sent to a place where they may associate with homosexuals, or all the other kinds of people?

Have you given any thought in regard to any other method of handling this?

A. I do not know of any other method which might apply to those offenders.

Q. Do you not think the persistent offender should be isolated?

A. Yes, absolutely.

Q. There is no provision for that in the Code. Once he is convicted of rape, then he may be put away for a long time.

A. Oh, yes. The laws of certain states in the United States, notably California, are very strict on that type of offence. I have not the details here, but they go into it very thoroughly, and make the punishment fit the crime.

Q. The police officers tell me they have lists of people of that kind on record, usually for the purpose of going to them, when an offence is committed, and checking up on their activities?

A. Yes.

Q. It seems to me that is hardly good enough. However, you have no specific suggestion to make?

A. No, sir, I have not. If I had, I would be only too glad to let you have it.

Other than that, I agree with you that these rapists should be segregated from those who have committed other offences.

Q. What I have in mind, Mr. Commissioner, is they should not necessarily be imprisoned at all for the

offence every time, but they might be able to spend their time in a place which would prevent them from repeating it, as so many of them are doing, as you know?

A. That is right.

Q. Before I conclude, I would like to ask you something else; can you assure us that all of the activities of the Provincial Police are covered in your report and the public accounts?

A. I think so, sir. That is, the entire force?

Q. If anybody would know, you would.

A. Oh, yes. I am sure they are all covered, sir.

Q. Have you listed everybody in the public accounts -- all members of the force?

A. I am not too sure of that. I think so, as individuals. They are all taken care of.

Q. You have no constables on the force now, who are not mentioned?

A. No, sir.

M.R. JANES: What is that leading up to?

M.R. DECLERK: Yes, what is that leading up to?

THE WITNESS: Oh, no, we have none of that now. That is all washed up.

Dealing with gaming just for a minute, I am not sure whether I answered the question or not, or

even if there was a question put to me. I do not know whether I made any observation on it or not.

BY THE ACTING CHAIRMAN:

Q. On what?

A. The gambling situation. I am opposed to any extension of legal gambling.

BY MR. DONALD:

Q. Any sort of restrictions?

A. Yes. The State of Nevada in the United States has tried it for some time and I do not think it has proven a success. They have had to double their police forces at Reno on the western border near California, and at a town called Las Vegas, in the south-east corner. It is very understandable why. The influx of undesirables is heavy, and it is the gambling which draws these people.

Then the relief they have to supply to people who go broke there is tremendous, and all the State of Nevada gets out of it, is a small license fee, compared to the large sums of money which are gambled in that State.

BY MR. GRUMMETT:

Q. And also greater amounts have to be spent by the state on welfare?

A. Yes. May I read a statement made by the Governor of Nevada to the effect that there is no wrong road to riches. The license fees they get out of it, are negligible.

We do not want Ontario turned into a Nevada. We have better protection than that.

BY MR. JOLLIFFE:

Q. Is it not true they have a high crime rate?

A. Yes. When they had to double their police forces, it is quite obvious why they had to do it. Under certain circumstances legal gambling is a step in the wrong direction, as far as this province is concerned.

BY MR. DUNLAP:

Q. As was said this morning, they are educating them to gamble.

A. That is right. Ramsay MacDonald, one of the great labour leaders in England, was entirely against the system, but we cannot compare what has happened in England with what is going on in this country, as the conditions are so different.

BY MR. JOLLIFFE:

Q. There has been a lot of talk, Mr. Commissioner, about the connection between politicians or law enforcement officers on the one hand, and the

gambling fraternity on the other in the United States. You do not have to give me any details, if you do not want to, but do you know, or have you any reason to suspect anything of that kind in the province of Ontario at the present time?

A. No, sir, I have not. I think the province of Ontario to-day is clean from the law enforcement standpoint, and has been for some time.

Q. You have no grounds for suspecting?

A. I have no grounds to suspect anything that is improper or illegal.

Q. And if it did come to your attention, you would take action on it?

A. I certainly would.

Q. I am not speaking now of the present moment, but citizens have frequently said to me that they cannot understand how these open houses which have been referred to in the area immediately to the west of Toronto, operated prior to 1942.

A. I think I gave some evidence at the outset, at the first hearing, that the Chief of Police -- he is dead at the present time; Mr. McConnell -- received instructions from the Reeve of the Township, not to take any action.

THE ACTING CHAIRMAN: You did state that.

THE WITNESS: And it was the policy of the government for these municipalities to stand on their own feet and enforce their own law, until they got to a point where we had to step in -- which we did -- and clean it up.

THE ACTING CHAIRMAN: I understand the present Reeve wanted to appear before this Committee and explain that he was not the Reeve at that time.

THE WITNESS: There was something in the paper following the presentation of my yearly report last year to the Legislature, and Mr. Jolliffe brought it to my mind. I would like to clear that point up now.

A newspaper -- I cannot recall which one -- gave the impression at the time when my yearly report was presented to the Legislature, that crap games and rake-off games were in full operation in the Township of Etobicoke, North York, Oshawa and other places. I never said that.

Here is what I did say, in my report:

"Bank Crap Games and Rake-off games were found to be operating in the following municipalities: Crowland Township, Etobicoke Township, North York Township, Oshawa, Tay Township, Sault Ste. Marie,

Vaughan Township, and Windsor."

That was all that was said, and there was a conviction took place. I did not say it was rampant or anything like that. That I said is correct. Inspector Tomlinson knows that.

STAFF SERGEANT TOMLINSON: Yes, sir.

THE WITNESS: There was a wrong meaning taken, which created an unfavourable impression in these townships, and I think possibly Mr. Sinclair wanted to clear that point up.

I did not say what I was alleged to have said.

THE ACTING CHAIRMAN: Will you be available when we resume?

THE WITNESS: Yes, I hope to be.

BY MR. GRUMETT:

Q. On Tuesday, July 24th?

A. Yes.

BY THE ACTING CHAIRMAN:

Q. If there is anything further we require, we will let you know.

A. Oh, yes. I will be only too glad to help you if I can.

---The witness retires.

THE ACTING CHAIRMAN: We will adjourn now until Tuesday, July 24th at 10.30 in the morning.

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---Whereupon at 3.35 o'clock p.m. the further proceedings of this Committee adjourned until Tuesday, July 24th, 1951, at 10.30 of the clock in the forenoon.

- - - - -



ONTARIO

PROCEEDINGS
of the
SELECT COMMITTEE OF THE
ONTARIO LEGISLATIVE ASSEMBLY

APPOINTED TO ENQUIRE INTO AND REPORT
UPON CERTAIN MATTERS CONCERNING THE
ADMINISTRATION OF JUSTICE IN THE PROV-
INCE OF ONTARIO.

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Vol. 13.

Tuesday, July 24, 1951.

1798

T H I R T E E N T H D A Y

Toronto, Ontario,
Tuesday, July 24th, 1951,
At 10.30 o'clock a.m.

- - - - -

---The further proceedings of this Committee re-convened
pursuant to adjournment.

---All parties present.

---Same appearances as heretofore noted.

- - - - -

MR. FREDERICK CHAIT, appearing as counsel for the
Triangle Publications, Inc.

- - - - -

THE ACTING CHAIRMAN: Gentlemen, in the absence of
the Chairman, I will call the meeting to order. I
believe the first witness will be Mr. Perlman, of the
Racing Form.

- - - - -

JOSEPH SAMUEL PERLMAN,

A witness being called and duly sworn, testifies as
follows:

BY THE ACTING CHAIRMAN:

Q. Will you proceed, Mr. Perlman?

A. I presume, Mr. Chairman, it will be in order for me to make a preliminary statement?

Q. Yes.

A. I prefer to make it orally.

Q. That is quite all right.

A. I want you gentlemen to know that I really welcome this opportunity to be here before you, because I think that is the only way we can clear up the picture in relation to some innuendoes and misinformation, and I think ignorance of our operations, which has led to a lot of -- well, misconceptions.

I am really not within the jurisdiction of this Committee, as I am a resident and citizen of the United States, but I was very anxious to be here before you, because, while I am not an officer of the Inglomurray Publishing Company, which publishes the Daily Racing Form, the office operates under my direction. I am the President of the Trade Publications, of the Triangle Publishing Company, and they consist of the Morning Telegraph, which is published in New York, and the Daily Racing Form, which is published in several cities in the United States, in Toronto, as

well as in Mexico.

My reasons for coming here are really twofold; first, I want to be in a position to give you all the information you might want, and I am the person who can give it to you, as I have the responsibility of publishing this newspaper, which I think is the finest newspaper of any sporting publication published anywhere in the world, and is recognized as such by people who are interested in the great sport of racing.

Secondly, the hearings thus far seem to tend to go in a direction where the sport of racing has become the scapegoat.

It is unfortunate, that it happens that way, but it always does. Unfortunately racing, which is certainly to me one of the finest sports there is in the world, and which attracts many of the finest people in this country, in the United States and in England, where it has always had the support and personal participation of the Royal family, and many of the Prime Ministers.

I am not suggesting, that racing does not also have people in it who may be suspect, but what activities do not have that?

I think it is also very unfortunate that all of the hearings and investigations in connection with illegal wagering on racing, -- because legal wagering is associated with the sport - as I say, the illegal end of it is stressed entirely out of proportion to its importance.

The Kefauver Committee, in the United States, which made the most complete investigation ever made in connection with illegal wagering, found out gradually that the volume of wagering on other sports, generally speaking, was infinitely more widespread and greater than that on horse racing. In fact, they had one man who admitted he had wagered over one million dollars a year on basket ball. I do not know how much he really did wager, because they usually, for obvious reasons, under-estimate their real activities.

Now, what is the situation in relation to the wagering on sports other than racing, a situation which I believe is true in this country, as well as elsewhere. I am a native of Canada; I lived here for forty-three years, until 1943, when I went to the United States to accept a position with the Triangle Publications, Inc., of which I eventually became the publisher. I am very proud of that newspaper, and am here to defend it. It is

a newspaper with great integrity, and a newspaper which does a great deal of service for the sports it covers, and a newspaper which has received the commendation from everybody who is interested in the constructive side of horse racing.

I have a number of clippings here, which I would like to draw to the attention of the Committee.

Here is one (indicating) which says:

"Millions on every pitch. Huge baseball betting syndicates bring daily fortune to gamblers."

And here (indicating) is one which reads:

"Gambling in golf again assailed as rule changes are announced. Action clearly indicating intent to play as pro held violating amateur status. Water hazard situation clarified.

With the adoption of some changes to clarify the rules of golf for 1950, the United States Golf Association"

---And this is from the New York Times:

"--took the occasion yesterday to emphasize again that it does not approve organized

gambling in connection with the playing of the game."

That proves that the United States Golf Association does recognize this; that there is organized gambling in golf.

Here is another (indicating):

"New York Rangers 8 to 5 to defeat Canadians in opener."

I have never heard of any legal place where you can bet on a hockey game, which means the largest newspapers in the country recognize the fact that it is news to report that there is betting on hockey games.

I have been around the Maple Leaf Gardens, and you have to be very naive not to know that there are thousands of dollars changing hands on hockey games, football games, and everything else.

Here (indicating) is a clipping from the New York Post, and this is in reference to their news in regard to baseball. It starts off by saying this:

"Joe' West, our baseball handicapper, lost six dollars and fifty cents yesterday on the Yankees, paring his imaginary bankroll to \$130.00.

'Joe' to-day takes the Browns .50.00 to .5.50; the Reds .5.00 to .6.00, and the Dodgers .7.50 to .5.00.

To-day's specials Red Sox .8.50 to .5.00, and the Braves, .8.00 to .5.00."

Here (indicating) is a story from the New York Times, that shows that the odds were 17 to 5 on Roosevelt.

I just happened to have there in the files, but they are published in the New York Times at every election, and it gives the odds, in every state of the Union.

My only reason for bringing this out is to show that these investigations tend to show that people are gambling on things other than racing, but yet people are attacking racing, as apparently in the minds of the public, it is vulnerable, but I maintain that it is discriminatory against the sport, and I am here to put it in the right light, and to say that when you put in a certain newspaper that a horse is 8 to 5, that does not mean it will be 8 to 5 at the race track.

I am not suggesting that the newspapers should not publish this information, because it is news. The newspapers publish news of certain crimes

which take place. It is the purpose of a newspaper to report what is going on.

Here (indicating) is something which I think is more enlightening, a recent Gallup Poll in regard to betting in the United States. I am bringing this out mostly for the United States, because I am better acquainted with it, but I do not think there is much difference in the Canadian situation.

This (indicating) is the percentage or break-down which shows that by people's own admission, 53% of the people of the United States admit they bet. The percentage undoubtedly is higher, because many people will not admit that they bet.

"The recently imposed ban on horse racing probably won't put a very big crimp in the betting habits of the nation.

Horses or no horses, war or no war, the average American still has an itch to do a little gambling or betting, now and then.

To be precise, nearly one-half (45 per cent) of the civilian adult population of the United States played for stakes in some game of chance, or laid money on the betting line, at least once in the last 12 months.

But betting on horses, playing the 'numbers' game, plunking down chips on a roulette table, or any of the more garish types of wagering are not the commonest forms of chance-taking. The greatest number of bettors, although not necessarily the largest sums of money, are involved in plain, old-fashioned church lotteries or bingo parties, in various kinds of private card and dice games, and in bets on elections or athletic events.

That is what an Institute survey on the nation's gambling habits shows.

Of the people who have done a little gambling or betting in the past year, only 15 per cent claim to have made money. The rest say they have either broken even or lost -- mostly the latter.

The following list shows the percentage of adult civilians who admitted in the survey that they had indulged during the past twelve months in some of the well-known devices from parting a man from his money, for ends both worthy and unworthy.

1807

Perlman

Church lotteries, bingo, etc.	24%
Playing cards or dice for money	20
Betting on elections or athletic events	17
Slot Machines	16
Punch-boards	15
Betting on a horse race	7
Playing the numbers game	7

A good many people said they had done more than one of the above.

This year's survey found fewer bettors than was the case in a similar survey in 1951 when 54 per cent of the population confessed to having indulged in some form of wagering or gambling.

The lower figure today is probably due to the fact that the survey did not include men in the armed forces, but was confined to civilians only. It is no military secret that, war or no war, the average soldier is always a likely candidate for a game of chance."

That is a survey made by a completely disinterested organization.

BY MR. JOLLIFFE:

Q. What is the date of that survey?

A. It is January 27th, 1945. There was another one published recently which was similar, but which I did not clip.

Q. Just on that point; was there any racing in 1945, in the United States?

A. Oh, yes, all sorts of racing; racing all over the country.

Q. In the last year of the war?

A. Yes. There was a black-out for about three months early in 1945, but that survey was taken before there was a black-out. The black-out was after that.

There was a recent survey made on betting, which I have not got here, but if the Committee is interested, I can send it to you. It was similar -- in fact, I think the ratio was even more the other way.

Now, I would like to give you a picture of exactly what our operations are here in Toronto.

We publish the Daily Racing Form here, which covers the Canadian tracks, and the Eastern Canadian tracks, and what we call the "major tracks" in the United States.

This (indicating) is a copy of our latest edition, which just came out last night. I am being very benevolent in passing these around, but we have a couple of stars on there, so if you try to cash them, you might have some trouble.

EXHIBIT NO.102: Copy of Daily Racing Form, July 24th, 1951, as identified by the witness Perlman.

THE WITNESS: You will notice that covers information from Jamaica, Long Island, Narragansett, Fort Erie, Monmouth Park, and matters concerning racing at Tanforan, and about the sales which are going to start at Lexington.

We have a column here by Frank Armstrong, one by Nelson Dunston, and one by Charles Hatton, who writes on breeding, and so forth.

Now, how do we gather the news? We gather this news by having correspondents at all the race tracks when racing is on. We gather the official charts; which are the foundation used by all racing secretaries and handicappers, and which are officially recognized by every race track in the world, by officials of the National Association of State Racing Commissioners, which includes every Racing Commission in the United

States, and we also have official recognition from the Ontario Racing Commission. However, I will deal more with that a little later.

These charts are gathered at the race tracks, and they are sent by teletype wires, or in many cases by mail. These charts are gathered and mailed into our offices, and are published into a monthly book which contains the charts of every race run on the American Continent, United States, Canada, and Mexico.

These charts are the foundation for all handicappers and racing secretaries, breeders, owners, and race track followers, although this book (indicating) is purchased almost entirely by officials and breeders.

EXHIBIT NO.103: Copy of Daily Racing Form Chart Book, May, 1951, as identified by the witness Perlman.

THE WITNESS: We have the official responsibility, as the official publishers, to gather these charts, and we publish this book (indicating), and sell it for five dollars, but it costs us about fifty dollars to bring it out, but we consider that is part of our responsibility to racing.

We also publish the American Racing Manual, the most complete book published anywhere in the

world on any sport, which contains the amounts of money won by horses, together with the number of races each horse has won. It contains the yearling sales, and a great deal of information of interest to breeders, and it contains records of all kinds, the rules of the tracks, the history of racing, and it is a wealth of information, without which I think the racing people would have difficulty in getting along. I will leave this copy with you.

EXHIBIT NO.104: Copy of the American Racing Manual, 1951, as identified by the witness Perlman.

THE WITNESS: We also publish a book called, "Steeplechasing and Hunt Racing in America", which contains a history of steeplechases and hunts in Canada, with a wealth of material on that sport, which is almost completely a non-wagering sport, because there is no wagering on a hunt meeting, except the steeplechases held at Woodbine, and at Belmont Park, and a few at the Eastern Seabord, and a few others, such as the hunts at Louisville, and Middleburg, West Virginia.

EXHIBIT NO.105: "Steeplechasing and Hunt Racing in America" 1950, as identified by the witness Perlman.

THE WITNESS: In addition to that, we maintain a bureau at Lexington, Kentucky, which covers the entire breeding industry of Kentucky on a year-around basis.

We have a bureau there with three or four people, and next month when the sales start at Lexington, we will probably have at least a half dozen there. We report every yearling that is sold, the price, the pedigree of the horse, and the purchaser, and that is eventually incorporated in the chart book.

We also publish in this paper (indicating) every day all the disqualifications and rulings of every Racing Commission in the United States, Canada and Mexico.

(Page 1813 follows)

We have correspondents in Australia, in many of the South American countries, and we also subscribe to Reuters International News Service which supplies us with international news, and we subscribe to the United Press Service.

Our wires are under this plan; we have three drops from our transcontinental wires, which link our main offices, which are New York, Toronto, Chicago, Cincinnati, Houston and Los Angeles, which gather all this news.

These loops have drops in the office here in Toronto, for instance. Two of those loops are leased by the International News Service, and operated for our benefit; one is leased from the American Telephone and Telegraph Company, and another from the Western Union and another additional loop is leased from the Triangle Publication.

In addition to that we have a Morse wire, when there is racing in Ontario, and we receive whatever we need from the racetracks in Montreal or Ottawa over, I think, the Canadian National Railways.

None of the information, news or statistics which are received over these wires in Toronto is supplied to anybody in Canada; none of the information is supplied by either telephone or telegraph, or in any

manner whatsoever to anybody. The only news which is published in any paper in this city, that is supplied to any paper here, is that the Toronto Telegram receives the Daily Racing Form's selections, which are published daily. I think that is supplied through our office, although it is not distributed through our office.

The Daily Racing Form's racing selections are distributed by the Chicago Tribune Daily News Syndicate, and they furnish it to any newspaper which wants to buy it.

It is significant to note that the selections published in these papers we consider of the least importance of anything we publish. If we considered it important, we would not supply it for a nominal fee, to be distributed for five cents.

There is nothing supplied from this office in Toronto.

There has been a lot of misconception and misinformation as to the wire services. The so-called "wire service" which was so completely involved with the Kefauver Committee, has no relationship whatever to our office. We have no relation with the Continental Wire Service of any kind directly or indirectly, nor do we have any agreement to do business with them in any way, shape or form. Neither the Daily Racing Form in this city,

or any of our offices in the United States, supply anything of any type of news to anyone except the Associated Press, the United Press, and the International News Service, and many of the leading newspapers in the United States, who take charts from us -- not a complete service, but charts from us, when the meetings are on in a particular sector, where racing is taking place.

BY MR. HOUCK:

Q. Have you been asked at certain times to give your service to bookmakers or gamblers?

A. Not at all. We do not have the type of information a bookmaker could use, because we are not in a hurry in regard to publication.

The Toronto Telegram and the Toronto Star, for instance, are in a hurry and desire fast service, and they receive it from the Associated Press Service. We do not publish from the major tracks what are called "results"; we publish a complete chart, which takes about a half an hour or even longer, after the race, until it is received in our office, and published in this form (indicated). We do not supply anything to anyone except the newspapers with a general circulation.

Our relationships in the United States are these; at every racetrack in New York our wires are leased by the Associated Press to us, and certain of the

newspapers have this service, but our charts are used, which come from the racetracks, and which are sent over these wires simultaneously to our office, to the Associated Press, and the New York newspapers which handle the charts. In addition to that, we have some newspapers which receive it directly from us, but not the immediate results nor the names of the jockeys nor the scratches, which are unnecessary because we do not go to press until six o'clock in the evening.

I would like to leave a few more papers with you, to give you some idea of the coverage.

Here (indicating) is a copy of the Morning Telegraph, which is one of our papers in addition to the Racing Form, and which contains in addition to information on racing, what we believe to be the best amusement section in New York city on the theatres, motion pictures, radio and so forth.

This (indicating) will give you an idea of the type of coverage we go into. When "Citation" won a million dollars, this paper contained sixteen columns of coverage, which was given to that particular story, giving a complete history of his breeding, his past performances, and so forth.

I would like to leave that with you simply as

a sample of the type of coverage we do.

EXHIBIT NO. 106 - Copy of
Morning Telegraph,
July 17, 1951, as
Identified by the
Witness Perlman.

The general conception amongst people who are not interested particularly in racing, perhaps do not read this paper, and if they look at it at all, that is, at this Morning Telegraph racing form, they think they will know who will win the fifth race.

But the people who are interested in racing as a sport read this paper, and learn about racing, and secure all the information possible in regard to racing, and interest has developed in the United States, caused to a great extent by the great coverage we make.

I would also like to leave that with you (indicating).

EXHIBIT NO.107 - Copy of
Morning Telegraph,
May 5th, 1951, as
Identified by the
Witness Perlman.

I would also like to leave here a copy of the New York Turf Review in addition to the manual.

We publish the Kentucky Derby edition and review here in Toronto.

I would like to leave these papers with you to give you an idea of the tremendous coverage we give racing.

There seems to be, in some of the evidence I noticed was given here, which I read from the Toronto Daily Star, where a Mr. Hazell in some case in Hamilton --

BY MR. JOLLIFFE:

Q. I think that is the Globe & Mail.

A. This says:

"Mr. Hazell showed him a copy of the Daily Racing Form. 'Is not the Daily Racing Form the basis of the sporting news?', he asked. 'Yes, Mr. Shaver gets his entries from it', replied the witness. 'Maybe you should prosecute it'. The Inspector said it was different, since it came out the previous day, whereas the scratch sheet carried new developments up to within two hours of post time".

This will give you an idea of the misconception in relation to what we publish. Here is a man who thinks that the entries published in the Racing Form are absolutely different than those which appear in the Globe & Mail or any other paper. In fact, there was a

statement made by this man that we supplied this particular paper. I do not know anything about this paper; I do not know what it publishes; I have never seen it; we do not have anything to do with it.

Q. Is that a reference to the Daily Turf and Sporting News?

A. No, it is a reference --

Q. The proceedings to which you are referring, were not before this Committee?

A. No, but I wanted to bring that out as a sample of the misinformation which appears in relation to our publications in which I am primarily interested.

This (indicating) is something else I want to leave as evidence of the coverage which we give to other sports in relation to betting.

Here (indicating) is the New York Herald-Tribune, one of the most conservative papers of the United States, and yet here (indicating) is a large headline, which says, "Charles, 5 to 1 to beat Walcott to-night".

After the fight, and this is still in the Herald-Tribune -- one paragraph said "Except on a sentimental score, no one gives Walcott a chance". Then it goes on to say:

"Except on a sentimental score, no one gave

Walcott a chance in this, Pittsburgh's first heavyweight championship fight. The odds were about 5 to 1 in Charles' favor, but there was no real betting on the fight. The result seemed fore-ordained. But Bocchicchio, always the gambler, couldn't resist the bargain price. He found a bookie who gave him $6\frac{1}{2}$ to 1 and he put up \$15,000, because he never lost faith in Old Jersey Joe, whom he brought back out of retirement and obscurity and poverty."

That really has no significance except to bear out the point I am trying to make.

I have a lot of papers here which show how other newspapers treat racing, but which I think it well known to you because you have probably read it in your own daily papers, and the daily papers give the selections in their columns to a much greater extent than we ever do, particularly the papers in the United States.

I think that is about all I have to say, except I would like to leave these booklets with you, also.

EXHIBIT NO. 108 - Copy of
Morning Telegraph,
Jan. 8th, 1951, as
Identified by the
Witness Perlman.

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EXHIBIT NO. 109 - Copy of
Daily Racing Form, New
York, Jan.8th, 1951,
as Identified by the
Witness Perlman.

EXHIBIT NO. 110 - Copy of
Daily Racing Form,
Toronto, Jan.8th, 1951.
as Identified by the
Witness Perlman.

EXHIBIT NO. 111 - Copy of
New York Herald-Tribune,
18th July, 1951.
as Identified by the
Witness Perlman.

THE WITNESS: There is one more thing I did want to bring out. This (indicating) is a book called the "Yearbook of Canadian Thoroughbreds, 1950", published by the Canadian Thoroughbred Horse Association, / which I think Mr. Taylor is president. That book is entirely about the breeding industry in Ontario, and is based completely on our charts and past performances which are published by the Daily Racing Form, and there is a great deal given to it here.

EXHIBIT NO. 112 - Yearbook of
Canadian Thoroughbreds,
1950, as Identified by
the Witness Perlman.

Now, here (indicating) are a lot of breeding journals published in various parts of the United States, dealing entirely with the breeding of horses.

Here (indicating) is a copy of the "Maryland Horse", for May, 1951.

EXHIBIT NO. 113 - Copy of "Maryland Horse", May, 1951,
as Identified by the Witness Perlman.

Here (indicating) is a copy of the "New Jersey Thoroughbred."

EXHIBIT NO.114 - Copy of "New Jersey Thoroughbred",
Feb. 1951, as Identified by the Witness Perlman.

And here (indicating) is a copy of the "Washington Horse" for May, 1951.

EXHIBIT NO.115 - Copy of the "Washington Horse", May, 1951,
as Identified by the Witness Perlman.

Here (indicating) is a copy of the "Blood Horse", May, 19th, 1951.

EXHIBIT NO.116 - Copy of "The Blood Horse", May 19th, 1951,
as Identified by the Witness Perlman.

And here (indicating) is a copy of the "Horsemen's Journal", for May, 1951.

EXHIBIT NO. 117 - Copy of
"Horsemen's Journal",
May, 1951, as Identified
by the Witness Perlman.

THE WITNESS: And here is a copy of the "Thoroughbred Record", for May 19th, 1951.

EXHIBIT NO. 118 - Copy of the
"Thoroughbred Record", May
19th, 1951, as Identified by
the Witness Perlman.

Every one of these publications receives permission from us to use our copyrighted material as a basis for their articles and statistics, and each one gives us the proper credit, as follows:

"Statistics in this publication relating to results of races in North America are compiled from Daily Racing Form charts by special arrangement with Triangle Publications Inc., the copyright owners of said charts. Reproduction prohibited."

I simply would like to leave these with you in order to give you some idea of our activities.

There is just one other point I want to make

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in relation to official recognition which we have here in Ontario. These (indicating) are from the Official Rules of Racing, by the Ontario Racing Commission, from Part 56 of the official publication.

Rule 465 reads as follows:

"The Daily Racing form shall be the official periodical for announcements and publications of the Commission and all publications promulgated by the Commission will be published in The Daily Racing Form".

and Rule 466 reads:

"The records of The Daily Racing Form shall be considered official in determining eligibility, penalties and the right to allowances".

I might say that these designations are voluntary on the part of the Ontario Racing Commission, because we have the same designations -- and still have -- from the former ^{Canadian} Racing Association, which functioned prior to the present racing commission.

Now, what is the basis? What do they mean by "official recognition"?

This (indicating) is a program of the racing at Fort Erie showing the conditions of the race, -- which means the conditions under which the horse is

eligible. This is the fifth race, claiming and shows the name of the owner, the trainer, the jockey, the weight, a description of the horse, and its immediate pedigree.

In regard to the weight, and the allowances, they are from the figures which we publish which are used as a basis to determine the weight which should be carried by each horse.

It is also the basis of determining how many races a jockey has won, in relation to his apprentice allowance, and the conditions which prevailed, and other information available where statistics have to be referred to.

When you open your racing season here, most of the horses have raced in the United States, and possibly in Mexico and these charts (indicating) have to be consulted to determine how much money a horse has won, how many races it has been in, and has won, in order to determine whether it is eligible for the particular race in which it is entered on a particular day.

That, I think, covers the picture, and now I will be most happy to answer any questions, no matter how embarrassing you may think them, because I am here to clear up any misconceptions in relation to the use

of our publication.

BY MR. HOUCK:

Q. Have you been asked, Mr. Perlman, -- I see that Governor Dewey has appointed a Crime Commission; have you been asked to appear before it?

A. No. Not only that, but I think it is significant that the Kefauver Committee, which made the most complete and comprehensive investigation of illegal wagering ever made, never saw fit to call us. Because they knew from their own investigation and reports which they have issued -- of which I think this Committee should have copies, as it would give the facts of that investigation and the operations of the wire services -- they knew that we had no relationship whatsoever with the wire services. In fact, in part of the report they stated that our company and our publications were in no way associated with the so-called wire services.

Q. That program which you have there; was it issued by the track, where the races were held?

A. Yes.

Q. Do you charge the tracks anything for the information they get from your publications?

A. Nothing whatsoever. All these official statistics

are available for use by everyone, except for publication purposes. There is nothing being published that belongs to us, but is a basis for determining the eligibility of horses, and that is part of the service we contribute.

For instance, there is a race meeting on right now at Mitchell, Nebraska. We will publish any information of past performances, and we will have a crew down there, which covers the race meeting, and gathers these charts for inclusion in the chart book, for any horses which raced there, showing how the horses ran during the races, and the weight they carried, and when they raced, and it will show when they have more weight added because they have won a race, and all that becomes official.

Previous to 1946, a man could go down in that country and win three or four races, and we would have no information whatever about it.

Q. Do you sell your publications at the track?
A. We sell them at the track, but we do not make any distribution, except through a legitimate news agency. It is sold in the same way as other publications are sold.

BY MR. JAMES:

Q. Did I understand you to say that the

"bookie" could not use this information?

A. I did not say a bookie could not use it. The bookie does not use that sort of information. Book-makers read our publication, and they also use information obtained from the newspapers, for instance, on a speech made by the Hon. Prime Minister of this country (Mr. St.Laurent) in order to determine what the odds should be for the next election.

Anything that is news can be used for betting purposes. The fact that you publish in the paper that the Maple Leafs will play the Rangers, that is betting information, because people can bet on it.

Our business is covering the races with the greatest accuracy and integrity that we can, and that is what we are trying to do, and I think that is what we do, do, and we have received commendation from every important racing body in the United States, including the National Association, the jockey clubs, every racing association, every breeding association, with whom we work in close co-operation.

BY MR. JOLLIFFE:

Q. Mr. Perlman, perhaps you could assist us by telling us something about the restrictions --

where there are restrictions -- on information at the American tracks. Can you tell us what is the situation in California?

A. The situation in California is similar to the situation in every race-track in the country. The results are sent out by wire, and are supplied from the race-tracks.

We are in every race-track, under arrangement with the race-track officials. We receive special privileges at the tracks because of the special nature of our business. Everyone who is in the Press box, of any race-track in the United States, is not permitted to send any result out of the track until the price is official, and the official notice is on the boards.

The results which are received so rapidly, are stolen from the tracks, taken from the rooftops or the housetops. That was all publicized very fully in the report by the Kefauver Committee.

One recommendation by the Kefauver Committee was this -- there is one thing I think is very significant about the recommendations for legislation by the Kefauver Committee. They recommended several bills, the most important of which was one where they were going to lessen the dissemination of sports news -- which includes all the race news -- by any news association, other than

the legitimate newspapers. The other was, they would make it a felony to send results out from a race-track without the permission of the tracks.

Of course, there is always a doubt as to the constitutionality of it, because it might be a newspaper could not publish a report of these hearings here, without the permission of this Committee, but it shows they are thinking, and they think it would be one way of curbing the illegal dissemination of news.

We do not disseminate any odds prior to a race; we do not send a thing out until the result is official, and then we send out a complete chart, which never reaches our office until about a half an hour after the race is over.

Q. Is what appears in the racing form the official race chart?

A. Yes, they show the conditions under which the horse ran, during various parts of the races.

Q. There is one, I notice, on Page 28 of to-day's Racing Form, at Blue Bonnets, under the heading "Official Race Chart, Blue Bonnets," and it is dated from Montreal. That would come out of the track after the official result is announced?

A. That is right. This particular chart you are looking at was sent in by mail, because these races

were run on Saturday, July 21st. Is that correct?

Q. No, it is Monday's paper. It says: "Montreal, Quebec, Monday, July 16th".

A. This (indicating) is an old paper; it is not to-day's.

Q. Yes, it is the Racing Form -- that (indicating) is for July 17th.

Q. Oh, yes, Mr. Grummett has the one for July 24th.

A. Take the one on Page 26. That is for Saturday. That was sent in by mail.

The charts from Connaught Park are run a day late, and are sent in by mail.

I will be pleased to answer any further questions you care to ask.

Q. Ordinarily they go out by wire?

A. Yes, ordinarily they go out by wire, and they reach our office -- for instance, let us take the Fort Erie chart, appearing on Page 4. These are charts of races run at Fort Erie yesterday, Monday. To-day is Tuesday. These were sent in immediately after each race, and it takes approximately one-half an hour for us to receive them. It is first called by the chart caller to the chart taker, and these are supplied by the race-track, because they show the official odds.

Q. This becomes available to the public at

what time?

A. It becomes available to the public at approximately 7.30 at night. We go to Press at 7.00 o'clock. We do not sell anything, or distribute anything, in any shape or form until this paper goes to Press, and is sold to the public.

Q. Does the same thing apply to Saratoga at Jamaica?

A. Exactly the same thing.

Q. These are yesterday's races?

A. Yes. They come in over the wires, the same way as information from the Fort Erie track.

Q. It would be available to the public on Monday evening?

A. About the same time -- around 7.30.

Q. In addition to those charts, under the heading of "Official Race Charts", you have other charts headed "Past Performances"?

A. Yes. Those are the records of the horses entered at the various racetracks.

Q. They are for to-day's races?

A. Yes. And this (indicating) is taken from information contained in the chart, and comprises the records of the horses, showing exactly where they finished in their previous races.

Q. Then there is a third chart, on Page 7?

A. Those are not charts; they are the names of the horses entered at the various tracks.

Q. That is a list of entries with the probable jockeys?

A. That is right. A great number of those horses have no jockey on them at all. It says, "No boy", which means no jockey has been assigned. Many of them are subject to change. Our entries do not contain any changes, but the information distributed by the Telegram and Star about eleven o'clock in the morning, contains all the official jockeys, and scratches, at some of the race-tracks -- not all of them.

Q. They also contain a chart number, I see?

A. Yes. Here is the way that works. There is an index number here (indicating). Let us assume it is the number "36448". A person who is interested, would refer to the chart book, or he could refer to the special chart and then refer to the chart book, which comes out much later.

Q. On Page 6 you have the daily racing form entry selection.

A. That is correct. Those are selections at all the race-tracks by handicappers, which is exactly the same thing as is done by most newspapers throughout the

country.

Q. Well, now, is it? It is rather more full.

A. No, except that we may run more tracks.

Q. But it gives selections for all races?

I do not think most of the newspapers do that.

A. Oh, yes, sure they do.

Q. Take this morning's Globe & Mail --

A. Here (indicating) is the Telegram, with the racing form selections.

Q. They are your selections?

A. Yes.

Q. This morning's Globe & Mail, I think you will find, give only one selection.

A. That may be true, but that is not general.

Here (indicating) is a copy of the Winnipeg Free Press, with the selections on the front page.

Q. That is the way they come down?

A. Yes. "Free Press Graded Selections by Laysell".

For instance here (indicating) is the Boston American, "The World's Greatest Handicapper", at Lincoln Downs. And they can carry many others, too.

Q. They also do apparently what you do? You have selections by a number of different experts?

A. That is right.

Q. And at the right-hand side you have the

corcensus of the experts?

A. That is right. For instance, here (indicating) is a copy of the Oakland Tribune, which has all the same thing.

Here (indicating) is the paper I just tore out of the New York Journal American, with exactly the same thing. The quantity may be somewhat different, because we have a wider coverage, but the only reason it looks like more is that we publish all the major race-tracks, while some of the newspapers only carry local entries.

J. There is just one thing I would like to ask. Quite apart from all other information, which is very complete, which appears in the racing form, what is the purpose of these selections?

A. The purpose of the selections is the same purpose you have in covering any sport. The main interest amongst the public is who will be the ultimate winner. It is news. Every newspaper on the American continent calls the selections "news".

J. Is it just an academic interest, in who may be the winner, or is it not tied up with the wagering which goes on at the tracks, and elsewhere?

A. I would say not for that reason. In relation to our

papers, the selections we carry are a very unimportant part of the paper, or we would not sell them to another newspaper, like the New York Daily News, which has a circulation of approximately two and one-half million, and which buys our information, and sells their papers for three cents. If we thought it was important, we would not do that. It has the least significance of anything which is in our paper, in my judgment.

Q. That may be so, but is it not a fact that its real purpose is to assist people in placing their bets, legally or illegally.

A. Not at all. The purpose of our publishing a first-class newspaper is to give the public what they want.

Q. Let us confine ourselves to the selections. What is the purpose of the selections?

A. The purpose of the selections is to give the public an idea of the condition of the horses.

What is the purpose of the New York Times putting in big headlines that "Charles is 5 to 1 to win the fight with Volcott?"

Q. If the New York Times were here, I would ask them that, but they are not. You are here.

A. I am a sports writer, and if you put a headline that "Charles is 5 to 1 to beat Volcott", the significance of that to the public is that Charles is an overwhelming favourite to win the fight.

BY R.R. GRUMETT:

Q. That may be all right for those who like horses, but people are interested in people, and they are not so interested in the names of horses?

A. I think they are.

Q. If you want to bet or gamble on the races --

A. I am not the least bit interested in who is playing baseball, but I am interested in what horses are running at various tracks, and I do not bet.

Q. You are interested in baseball or boxing, because you happen to have some association or some preference for a certain boxer or a certain ball-player?

A. Do you think that a person who is interested in racing is not equally interested in the outcome of horse races?

Q. Certainly not.

A. The question you asked is very important, because

it reflects the frame of mind in relation to racing, which we are trying so hard to combat. It reflects a frame of mind among the laymen who are not interested in racing and who are regardless of the interests of other people.

Q. Is it to the interest of people to read the racing information?

A. Is there not a certain interest to a man who reads the Wall Street Journal in relation to stocks?

Q. We read the daily newspapers because we want to get information of what is going on in the world to-day. Why should we read the Racing Form?

A. Maybe a man is not interested. Maybe a man who is interested in what is going on in the world is also interested in what is going on at the race-tracks, because that happens to be his hobby.

I know people who simply cannot read enough about baseball. Why should a paper like the New York Times give more space to racing than anybody else?

Would that not indicate that the New York Times, which is perhaps the finest paper in the world --

BY J.R. JOLLIFFE:

Q. They give more space to everything else.

A. That is right, but here (indicating) is the whole page in regard to Jamaica. Here (indicating) is the story about "Supreme Court" winning the race in Britain. Does that not indicate that your newspapers are of the opinion that their readers are interested in horse racing?

BY J.R. GRUMITT:

Q. Does it not indicate that the readers of that paper -- and the paper recognizes it also -- are becoming more and more interested in getting information which will permit them to place bets?

A. I cannot share that view, because if I do in connection with racing, I will have to share it in connection with baseball. I have given you significant evidence of what the trend is in relation to other sports.

Some people think it is a crime that race results get out fast. Why not take the same view when you stop to consider that millions of dollars are bet on baseball, and you can turn the radio on any time and get every pitch, and I assure you that people bet on every pitch.

Would you consider that the publication of Baseball News was an aid to gambling, and that every-

thing in relation to baseball should not be published? What is not an aid to gambling?

Q. Any person who sits down and studies your paper, would not have much time to read anything else.

A. I am not here to censor everybody in connection with what they are going to read. I am a publisher of a newspaper which deals with horse racing. Thoroughbred racing is the finest sport in the world, in my opinion, and I have every right to have that opinion, the same right as you may have in relation to cricket or baseball.

I have the responsibility of reporting races with the utmost integrity and honesty, and give the people every bit of honest news I can get. But to censor what people should read -- well, I don't know. There are things in some papers which I may think should not be published.

Q. Take, for instance, forty years or more ago, the small towns held these fall fairs, and the racing was held for sport, not the races about which you have been talking, but they were held, not for the money to be made, and not for persons to make a living out of that type of racing. Forty years ago, at our

small fall fairs, men ran their horses for the sport of competing; they wanted to see their horses win.

A. Are you suggesting to me that men like Mr. Taylor, -- Colonel Taylor, I think it is -- and all these other gentlemen who are racing here, are only in it for what they can make? Why, I think they are the finest sportsmen in the world.

Q. But there has grown up around racing, a group of men who intend making a living by betting on the races, as your paper supplies information which permits them to do so.

A. Our paper is reporting news of happenings on the race-track, in the same way as every other paper, only we do it better.

Q. You give a full coverage?

A. You are darned right I do. If I did not, I would think that I was being derelict in my duty.

The average newspaper has only one page of financial news, but I like to buy the Wall Street Journal, where I can get forty pages of financial news. Have I not the right to read forty pages, if I want to?

Q. In regard to racing, you are building up race consciousness?

A. I would like to see more people interested in racing than in any other sport.

A. If they watched them for the sport alone.

Can you tell me if more than one out of one hundred who read your Racing Form, is not reading it for information which will assist him in placing bets?

A. I do not know, and I cannot pass judgment on it, but I would say you are completely wrong, because in the thousands of subscribers we have throughout the country, who get our paper, are many men who are interested in the sport of racing. You are nostalgic. You believe that the buggy is better than a motor-car. I do not share that view at all. I think racing is great sport, and is attended by more people than any other sport in this country, and if we cover it with integrity, I think we are doing a swell job.

(Page 1842 follows)

Q. If you go to a racetrack and see one well-bred horse compete with another well-bred horse, I agree with you, but if you go to wager money, that is a different thing altogether.

A. If you invest in a stock to help industry, you are all right, but if you invest in a stock as a speculation, you say that is different?

I remember one instance of which I had knowledge in regard to speculation. My father bought some lots in Saskatoon, and they began going up and he became very much interested, but when we went down to see them, he found that they had sidewalks, which led to the river and I think the lots were all in the river.

I cannot possibly conceive what difference there is between speculating and finding sidewalks which lead to nowhere, and speculating on the horseraces.

I think what is most interesting in relation to your remarks is as to what is the attitude, for instance, in England. They have had horseracing for centuries --

BY MR. JOLLIFFE;

Q. I think you are under a misapprehension. Let us not waste time on people's attitude. -

A. I did not start that.

Q. Just a moment. We are concerned here with law enforcement, You know the laws of this province, I

assume, with regard to the dissemination of racing information, and that is why I asked you what is the purpose of the selections which you publish in the Racing Form which may be perfectly legitimate -- which may be perfectly lawful -- but I think when you are asked a question you should answer it frankly.

A. I am answering them with utmost frankness. I said I did not see any difference --

Q. Please do not argue with me.

A. I am not arguing with you at all --

Q. Just a minute. I will ask you another question, and see if you will answer this one clearly.

The Morning Telegraph is also a daily publication?

A. That is correct.

Q. It comes out at what time?

A. In the evening, the same as the other papers.

Q. About the same time?

A. Exactly the same time. We do not publish any newspapers which come out earlier than approximately 6.30 or 7.00 o'clock in the evening.

Q. Does the Telegraph publish what is known to the trade as "morning line odds"?

A. No. They publish what are known as "approximate odds", and all newspapers in the United States publish

that.

Q. Will you show me where they appear in the Telegraph?

A. Right here (indicating). Right here on this table (indicating) on the left --

Q. "A-p-p-r" odds, means "approximate odds"?

A. Yes.

Q. This (indicating) is the Morning Telegraph of Tuesday, July 17th, and for Monmouth Park, racing, Tuesday, July 17th, and the approximate odds in respect to each horse. What is the purpose of publishing that information?

A. For the same purpose that we publish in regard to all other sports. It gives the public an idea of the chances for each particular race. For the same reason that the New York Times published "Charles 5 to 1 over Walcott".

Q. Forget the New York Times for the moment, and deal with the Morning Telegraph. Why do you inform the public that the odds on "Scrutiny" --

A. That is not a Toronto paper, which we are here to discuss.

Q. My question related to the Morning Telegraph of July 17th, and in that paper you informed the public that "Scrutiny" in the first race -- that the

1845

Perlman

approximate odds are 3 to 1. You ship this paper into Toronto?

A. We do ship that paper into Toronto, and every paper that is shipped here from Detroit or New York, and is sold here on the newstands, contains the approximate odds of the same type --

Q. Well --

A. I am here as a witness, and I want to make certain observations which are important to this hearing.

Q. I am not asking you about any other paper. I am asking you about your own paper. Direct your attention to your own paper. This paper reached Toronto the morning of Tuesday, July 17th?

A. Yes, I am quite sure it did.

Q. It was published in New York the night before, and would be available on the morning of Tuesday, July 17th?

A. Yes.

Q. And it tells there that "Scrutiny" was 3 to 1, in a race which is to run at 2.30 this afternoon. What is the purpose of informing any reader in Toronto that the odds on "Scrutiny" are 3 to 1?

A. To show the relative merits of the horse, because the odds indicate that.

I must answer all these questions relative

to a general newspaper purposes, because the main purpose of my coming here, is to prove to you in my evidence that we do not do a thing that other newspapers do not do. Otherwise, the importance of why we do so is not important to this investigation, that I can see.

The important thing to me, and why I came here, was because of the innuendoes that we do things other newspapers do not do, that we are doing something special.. We are not specializing at all.

Q. I think the innuendo was you do what other people do only you do it better.

A. May I use that in our advertisement?

BY MR. JANES:

Q. To go back to the odds. Why are the odds important to people?

A. The odds are important as news. For instance, you will find all your Toronto papers carried stories -- the papers here, as a general practice, do not carry approximate odds except on the English races.

I have read in the Toronto Telegram and the Toronto Star, the run-down of the Ascot races, which showed the varying odds. Why? Because if I read the paper, and I see .. . a certain horse at a certain price, it looks as if that horse will be the favorite, and has the best chance of winning, but at the same time,

the New York Times tells me that Charles was 5 to 1 to beat Talcott, in other words, that Charles is the favorite.

Q. Why do you publish this?

A. It is news. Why do the papers in New York publish the odds on elections?

Q. For the same reason as you publish racing information.

A. I would say that the Morning Telegraph and the Daily Racing Form is completely justified in publishing news.

BY MR. HOUCK:

Q. Do you think that the selections you publish bring down the odds?

A. No. Our selections have no effect on the odds at all. For instance, in a race, there will be eighteen horses entered, and six of them will surely be scratched. The track conditions are unknown and the jockeys are unknown, and those are the main factors which are needed for the public to bet on the horses, but they are not available at the time we go to press.

BY MR. JANES:

Q. Would it not be very easy for you to publish odds on a horse, when you possibly know that other horses are really better in order to make a real

killing for some of your friends.

A. No. That is where the Racing Form performs a great service, by gathering charts from all over the country. In that way, the records of the horses are made available to the public, and to make certain that certain people are not getting information which is not available to the general public.

In relation to the moral aspect of it, this is a story from the Tribune -- the Herald-Tribune of Wednesday, June 27th, where it says:

" The top-ranking prelate of the Church of England came out today in favor of cash betting shops for the nation's horse players.

The Most Rev. Geoffrey Francis Fisher, Archbishop of Canterbury, said that since the British will gamble -- law or no law -- they might just as well do it legally. At present the law permits cash betting only at the horse or dog tracks. Off-the-track handbook betting is legal only on a credit basis.

The poor, who can't get credit, bet cash just the same with fly-by-night street corner bookies.

A Royal Commission on gambling brought out the cash betting shop solution in a report issued April 17. Parliament has so far taken no action.

" I am inclined to think the proposal should be tried," the Archbishop said. "The present law about street betting is unenforceable. It is also unfair as between rich and poor. It must be changed. All agree about that.

' Most reluctantly I feel that probably the change proposed is the only reasonable one, and that under the strictest controls it should be tried -- on the ground that it is enforceable and removes an injustice."

BY MR. HOUCK:

Q. You made a significant statement a few minutes ago, Mr. Perlman. I think I understood you correctly. You said you did not bet? Would you enlarge on that.

A. I only bet occasionally when I go to the race-tracks. I am too busy with other things. My responsibilities in relation to the publication of the papers keeps me too busy. In fact, 99 percent of the work I do in relation to that work has no significance toward betting; it is toward publishing the best information I can in regard to racing news throughout the world; to cover all the races from the sporting technical side of it, and putting out a first-class newspaper, which I think we do, and which is accepted in the trade.

I think it is the best publication of its type in the world.

BY MR. JOLLINFE:

Q. You are not suggesting that the publication of approximate odds has no relation to betting?

A. I would say very little. That is not the intention of it. The intention of those odds is to show the relative merits of the horses as figured by different men. You will find that in the newspapers, and in some of the clippings which I have given you. Here (indicating) for instance, is the Great Handicapper at Lincoln, and showing the odds "3 to 4", "4 to 1", "5 to 1", and so forth.

Q. Your coverage is very complete as we have seen, but in the preceding column, under the heading of "Comments" your experts give an assessment of the merits of the horses.

A. Was it a comment in the Toronto Daily Star --

Q. Just a minute. You said the intention of the approximate odds is to show the merits of the horses, but you have already done that in the preceding column. You say a certain horse "shows promise", and another has "early speed and a chance", another "must show more", and another is "likely to improve", and another is "a doubtful starter", and another is "may

be hard to catch", and with another "does not figure".

Surely those are very clear evaluations of the merits of these horses.

A. That is the regular practice. I will read from the Winnipeg Free Press --

Q. Never mind the regular practice of newspapers. I am asking you why, when you have given these evaluations of the merits of the horses, you feel you have to give the odds.

A. The reason is that the competing and competitive newspapers in New York city give the approximate odds. Why do the Toronto newspapers publish a lot of different types of news? We publish that in competition with other newspapers. If we did not publish the approximate odds, the people would buy the Daily News and the Daily Mirror, and would get something we are not publishing.

Q. You say every paper publishes the approximate odds?

A. Every one except the New York Times, which only publishes the odds on feature races.

BY MR. JANES:

Q. This publication is only for the news to the public, you say? Why do you publish it when there is no racing in Ontario?

A. We publish it to maintain interest in the sport.

Every newspaper in Toronto publishes the entries on some tracks that are running in the winter time. We do it to serve the people interested in racing. As a matter of fact, we lose money in Toronto from the time the racing season finishes in the fall until it opens again the following spring.

Q. Is it not true that the great bulk of the illegal betting is on the American tracks?

A. I have no interest in illegal betting. We are not in that business. I challenge anyone to prove otherwise, and I will supply any amount of evidence you may want, of outstanding racing figures in America to prove my point, men who never bet, horse breeders and so forth. I have letters from a Mr. Moore, Chairman of the Nebraska Commission, from Mr. Earl Moyer, Mr. Ashley Cole, and Mr. George Widener, and a number of others.

I say that it is absolutely tragic that a great sport like racing which yields so many millions of dollars to the province, should be so maligned.

Racing is something the government has a great interest in. It derives a great amount of revenue, more than is derived from any other sport in the Dominion of Canada, or in the Province of Ontario.

There is no sound reason why people in this city have not more chances, and there is one bad

feature of it, and that is the amount the government takes away from the bettors' money, because I feel that the amount is far too great. You take about twenty percent here. That is the greatest in America, as far as I know, and I think it is unfair and something should be done about it.

BY MR. JOLLIFFE:

Q. That may be, but there has been evidence that the bettor has even less chance when placing his bets with a bookie unlawfully. That is what we are interested in. I do not think anybody has maligned the sport of racing.

All we have been interested in are the people who take bets unlawfully, and, frankly, we are also interested in those who facilitate that business by providing that business with services which are essential to the operation of the business. That is the point. That is the point to which you should address yourself. We are not interested in condemning the sport of racing or the government tax on racing, or the people who are interested in placing wagers lawfully at the track. We are interested in those who --

A. That was given in a very discriminatory manner. Why do you not bring people here from --

Q. Just a minute. When I am asking you a question, please do not makes speeches of that sort.

A. I apologize; I am sorry.

Q. We are not interested in your declamations, but we are interested in your answers to the questions.

A. I was answering --

Q. Then do not level charges of discriminatory actions. I was only asking questions about the information published in your papers, so do not level charges which say we are interested in taking bets unlawfully. We are interested in the services which make that possible.

A. I am trying to confine it to that.

THE ACTING CHAIRMAN: I suggest a five minutes recess.

---whereupon a short recess was had.

---upon resuming.

BY MR. JOLLIFFE:

Q. Mr. Perlman --

A. May I, before we start, apologize for using the word "discrimination" before. I did not mean it in that sense. I have a low boiling point in relation to racing, and I would like you to keep that in mind.

Q. All right. Do you publish anything other than the Racing Form in Ontario?

A. Nothing whatever.

Q. Do you know who publishes what are called "scratch sheets"?

A. I do not know, except what I read in the papers, that Mr. Roher is supposed to, but we have no relationship with him, directly or indirectly. We do not supply them with any information. We do not speak to them. We do not do business with them. We have never had any reason to do business with them.

Q. Your Company is really an American Company?

A. The McMurray Publishing Company, which publishes the Daily Racing Form, is a Canadian company, but is a wholly-owned subsidiary of the American company.

Q. That is the Triangle Publishing Company?

A. Yes. They also publish the Philadelphia Enquirer, with a daily circulation of over 700,000, and nearly a million and a half circulation on Sundays.

We also publish a number of magazines including the magazine "Seventeen" which is the finest teen-age magazine in the country. I want to stress that. That is why we are so sensitive to some of these things which have been said here, before I came.

We publish these papers with the utmost integrity, and we would not permit anybody associated with us, to supply anything or have any association with

any people who are not of the highest integrity.

Q. I was interested in that point, because the Triangle Publication is interested in the racing sports publications -- is it a subsidiary, or another Company which publishes the Philadelphia Enquirer?

A. No, it is the same Company. We have no business interest with any organization in the province of Ontario other than the Daily Racing Form which is published here.

Q. But, in reference to the United States, there is the daily paper in Philadelphia and some other magazines?

A. That is right.

Q. Of general appeal?

A. That is right.

Q. The Enquirer is a paper which at one time was owned by one of the Annenbergs?

A. It still is. Mr. W. H. Annenberg, President of our Company, is the editor and publisher of the Philadelphia Enquirer, and is one of the leading citizens of the city of Philadelphia. He has raised millions of dollars for charities and public institutions, and has been one of the leading figures in the progress of that city.

Q. I was interested to hear you emphasize you never had any connection with the Continental Wire Service.

A. That is correct.

Q. Never at any time?

A. Never at any time. In fact, I will give you some information which is of the utmost importance. Here (indicating) is the second interim report of the Special Committee to investigate organized crime and inter-state commerce. These are the findings of the Kefauver Committee, as published on page 18.

Q. What date?

A. This is report No. 141. The date is January, 1951. It is February 28, ordered to be printed, on page 18;

"Annenberg's disassociation with the Racing Wire News Service was complete. He did not attempt to sell it to anyone or to realize any salvage from it; he simply walked out".

That is the final conclusion of the Kefauver Committee which lasted over a year.

Q. Not a "final conclusion"; it was an interim conclusion.

A. Yes.

Q. Let me refer you to page 150 of the Kefauver Committee dated May 1st. I will refer to it and I am keeping in mind what you said about no connection between your Company and the Continental Company.

A. That is correct.

Q. Which is no doubt correct, but what I want to draw your attention to is this. The Kefauver Committee said at page 150,

"In our second interim report we stressed the great importance of the race wire service as a lever which makes it possible for organized criminal syndicates to gain a foothold in every community in the country. Bookmaking provides the richest source of revenue from gambling operations and the wire service, which transmits up-to-minute information about racing news, is essential to bit-time bookmakers. A bookmaker who does not have the wire service cannot compete with one who has. The wire service is as essential to a bookmaker as the stock ticker to a stockbroker. It is because of this importance of the wire service to the bookmakers that the organization which controls the wire service can, in effect, control bookmaking operations. It has bookmakers at its mercy and it can charge what the traffic will bear. Thus, the characteristic of wire service distribution is the great

disparities in the prices charged for similar types of service. Bookmakers are charged vastly different rates than the few legitimate users of the wire service, such as the newspapers. Bookmakers are frequently compelled to pay a fixed percentage of their profits to distributors of the wire service, whereas the few legitimate users pay only nominal sums."

The question arising out of that which I want to ask you is this: is it not the fact that the publication of approximate odds in the morning is of very great value to bookmakers?

A. I have been dealing with racing in Canada and the United States as a sports writer, and owner of horses for a little time, and breeder of horses. Our prices have absolutely no value to the bookmakers, because there have been no bookmakers, to my knowledge, who ever paid the price of the odds given in the newspapers.

The figures in our publication have no value, because you may have eighteen horses, and six of them will be scratched, and you may have a horse at 10 to 1, which may ultimately be 2 to 1,

because the good horses have gone out of the race.

It has some interest to a man interested in betting, because it gives him an idea of the value of the horses, but the bookmakers never could operate on these figures given, because they are not accurate.

The information he might get from the wire service might be of value, because they have the changes, the track conditions, the jockeys, and so forth.

Q. There has been evidence before this Committee that some of the illegal bookmakers who have been getting their information, were taking a wire service -- not your wire service, but other wire services, which included, among other things, the morning odds, and it was absolutely necessary to the operation of their business.

A. It might be necessary only to give him an idea as to the chances of the horses. But I know dozens upon dozens of bettors who bet on horses constantly, and I have never known of a single instance where they have ever been paid anything but the prices paid at the race-track. I have never known a single instance in all my experience.

BY MR. JAMES:

Q. Mr. Roher is apparently your agent here?

A. Mr. Roher has no connection with the Racing Form, directly or indirectly. We have no business relationship of even the remotest kind.

Q. I understand he operates the office which distributes this?

A. He does not distribute it. We publish the Racing Form at No. 50 Richmond Street, East, and we have fifty or sixty men, most of whom belong to a union, to the printer's union, the typographical union, the stereotypers union, the Newspaper Guild, and others, and everyone is employed by us under the direction of John J. Goldthorpe, and it is distributed through the City News Company.

We have no business arrangement with Mr. Roher of any kind, nor do we supply him with anything.

Q. You say the information comes over the wires, at what times of the day?

A. All through the day. The wires open about ten o'clock, and we keep on receiving all day, until Press time. They close about seven o'clock.

Q. Apparently the Scratch Sheet is prepared from the news which comes over the wires?

A. Not at all. The Scratch Sheet gets the same information. In the Scratch Sheet, you will find

the scratches, and the official times, which are not available until about nine o'clock in the morning.

For instance, I will give you an example. Here (indicating) is a race at Saratoga, in the first place there are 18 horses, of which 6 definitely will not start. That will not be information available until about nine o'clock in the morning, and it is not published by us. It is published in the Toronto Telegram and the Toronto Star, which receive it from the Associated Press. I saw it in the two local papers yesterday.

Q. You mean, it is about noon when the next paper comes out?

A. Yes, but that is still before the races start.

Q. They do not come out until some time after eleven o'clock?

A. The daily newspapers?

Q. Yes.

A. I do not know what time they go to Press. In New York they come out much earlier. The New York World, and the New York Times come out about ten o'clock.

BY MR. JAMES:

Q. You think this information only goes to these racing sheets?

A. We do not have any information in there, which anybody could distribute for the purpose of disseminating information for any purpose. It is for the people to read for their own purposes.

Q. Even if they get it in the morning?

A. We do not publish a scratch edition.

Q. If they got the information you publish here in the morning, before it came out, they could use it for betting?

A. If a person is interested in betting, he could use it for betting. If a man is interested in betting, he uses it in the same way as he would if he read a story, that a certain pitcher will pitch for the Toronto Maple Leafs. For instance, he may read in connection with the Dodgers, that Newcombe will pitch. He knows that Newcombe is a great pitcher, and that may influence him in his actions when Newcombe is pitching for the Dodgers. He will say, "With Newcombe pitching, I think the Dodgers will win to-day", and he can bet on the Dodgers.

Q. We are discussing horse racing, not baseball.

A. Yes, but there is a similarity, because there is more money bet on baseball than there ever will be on racing.

Q. We are trying to investigate the illegal betting, and trying to find out where that information came from.

A. We supply no information of any kind to any illegal source, directly or indirectly.

BY THE ACTING CHAIRMAN:

Q. You have no connection with them?

A. No. And I am giving that to you under oath.

BY MR. JOLLIFFE:

Q. I understand your company has no connection with the Continental Wire Service?

A. None whatever.

Q. You said that none of the Annenbergs had any connection with it?

A. Up to 1939, yes. That is roughly about when they disassociated themselves. Since 1939, there has been no association whatever, directly or indirectly, nor could any person working for us -- if we found out any person employed by us was supplying information to the Continental, they would not work five minutes longer.

MR. JOLLIFFE: I think in order to get this

picture in the proper perspective, I had better read to the Committee what the Kefauver Committee said about that, Mr. Chairman, since this matter of news services seems to be very important, and since both the Racing Form, in its own way, and the Continental Wire Service, in its own way, have operated in Toronto.

At Page 150, following what I read a few minutes ago, it goes on to say:

"In view of the great importance of the wire service to bookmaking operations, throughout the country, and in view of the fact that the wire service is one of the means whereby organized crime siphons off the lush returns from bookmaking, the committee feels that it is necessary to retell the story of the Capone mob's influence on the wire service which appears in its second interim report.

CONTINENTAL PRESS SERVICE A MONOPOLY

As stated in that report, the committee is of the opinion that the Continental Press, which has a monopoly of the transmission of gambling news throughout the country, is not

fully controlled by Edward McBride, its nominal owner, or by Thomas Kelly, its general manager, but is substantially influenced by the gangsters who constitute the Capone crime syndicate. As a corollary the Capone syndicate has the power to dominate bookmaking operations of any size throughout the country.

The racing wire news service first assumed importance under the ownership of H. L. Annenberg, some 30 years ago. Annenberg had been circulation manager for several large metropolitan newspapers and had likewise interested himself in the distribution of racing news publications known as scratch sheets. These scratch sheets contained information with respect to various aspects of horse racing which was intended to guide prospective bettors.

He conceived the idea of establishing a telegraphic news service which would carry over the wires fast and accurate information on racing for bookmakers and, with the big daily news distribution loops as his model, set up his own method of racing

news coverage.

In the days when Annenberg, now deceased, was building newspaper circulations, competition between daily papers in metropolitan areas was intense. It was the era when newspapers were numerous. Since then many have become defunct and many others have been merged. The fight for circulation was a rough-and-tumble affair. Often violence was resorted to in order to cut down the circulation of a rival journal. Obviously many of those who participated in the circulation wars were strong-arm individuals to whom street brawls for control of newsstands and distribution outlets were everyday affairs.

To obtain the news from race tracks was the first problem of the new wire service. Some track owners were willing to sell the exclusive privilege of reporting from their enclosures to the news service which Annenberg named Nationwide News Service. However, some tracks were unwilling to co-operate and here it was necessary for

the news to be purloined. For this purpose it was only natural for Annenberg to employ some of the individuals who had been associated with him in the newspaper-circulation wars. Crews were formed to telegraph racing information from some point near the track, if not inside it, to a central location in Chicago, whence it was relayed to other distribution points in the various states. From these latter subcentres of distribution local distributors furnished it to bookmakers.

Annenberg and his principal associates, including James A. Ragen, Sr., not only controlled nationwide in Chicago, they also apparently owned controlling interests in the suboutlets which in turn purveyed the racing information to the bookmakers. The profits accruing to the owners of this system were enormous.

ONE SUBDISTRIBUTOR TAKEN OF ALL

In view of its limited time and facilities, this committee was unable to study exhaustively the various subcentres

that constituted the provincial capitals of the old Annenberg empire but to complete its study it was considered necessary to make a detailed investigation of one typical point and for this purpose the committee selected the Pioneer News Co. of St. Louis, a relict of the old Annenberg distributorship.

The testimony shows that Annenberg, Ragen, and one Al Kruse of Chicago owned 50 percent of the stock of Pioneer News Co. when the latter was an affiliate of Nationwide.

Their participation in the business was not active but another Nationwide associate, William Molasky, who then lived and still lives in St. Louis, was their representative on the spot. There came a time in 1939 when Annenberg divested himself of all his interest in the racing wire news service, at about the time when the Internal Revenue Bureau opened an investigation into his income tax returns, and the Department of Justice began investigating his monopolistic control of the wire service. Molasky purchased the entire

Annenberg interest in the Pioneer News Co., for \$1.00; its actual value had no relation to the nominal purchase price.

Annenberg's dissociation with the racing wire news service was complete. He did not attempt to sell it to anyone or to realize any salvage from it; he simply walked out.

At that same time Ragen was also under indictment for violation of income-tax regulations. Ragen turned to an old friend, an associate of the newspaper war days, Arthur B. McBride of Cleveland. McBride was, like Ragen, a veteran of the vicious street battles for newspaper circulation. Moreover, Ragen's man Friday, Thomas Kelly, had been married to McBride's deceased sister.

It is one of the amazing aspects of this whole story that without any break in the service, without any dislocation of the facilities used in the entire process of obtaining racing information, legitimately or illegitimately, from the race tracks and without any disruption in its distribution, one man stepped out of this complicated business and another man took it over without

any formal transfer or without the passing of a single dollar.

It is hardly believable that no one else made any attempt to acquire the race news wire service either by purchase or by force. It happened just that way. The old management closed the door and a new management walked in and sat down and started operating."

Q. Have you any comments to make on that?

A. Yes. I would say it is very significant that the Kefauver Committee, after all these investigations came to the conclusion that Annenberg disassociated himself with this, and walked out, and had no connection with it.

I certainly hope that going back twelve years will not be used as any innuendo whatsoever in this present investigation. What you read --

Q. I read it all because I thought you should have the whole picture.

A. Yes, the picture is, he walked out. But the important thing is what has happened since 1939. We have no relationship with this business or with the people who run it, and that is what I am here to tell you.

Q. Did you not say that the Racing Form had been officially recognized by racing commissions since 1936?

A. That is correct.

Q. Between 1936 and 1939, when the same ownership was involved in what is now the Continental Service?

A. That is correct, except they were two separate enterprises, because the Enquirer also was published by Annenberg. You can cast the same reflection --

Q. I am not casting any reflections at all. I am getting at the facts. From 1936 to 1939 one had the official recognition by the Racing Commission, and the other did not, but it was the same ownership?

A. We are not here to investigate what happened in 1936 or 1939. We are here dealing with the facts to-day. I say this is completely irrelevant, what took place at that time. I think it is unfair, because it casts a reflection, whether you intend it to or not. The reflection is there, and I think personally, it is unfair, and I feel very keenly about it, because I think we are one of the most scrupulous organizations on this continent, and by reading that into the record, the implication is that we are in it now, when we are

not. It says definitely that Mr. Annenberg stepped out in 1939. This is 1951 -- twelve years later. If a man does something twenty years ago, and has since become a reputable citizen, you should not try to throw back at him something that he did before. I think it is completely unfair, and I am surprised you did it.

Q. I did not quote from this report; you did.

A. That is right.

Q. You quoted one or two sentences, and so there would be no misunderstanding, I quoted from the report, and I think you did withdraw your suggestion that I was unfair.

A. I refuse to withdraw it, because I think it is unfair, because the important thing you are trying to deal with is not what we did in 1936 or 1939, but what we are doing to-day. I think it is unfair.

You are interested in knowing whether we have any association with the wire service. We do not. The fact is, that in 1939 we did it, is of no importance. The only thing is that the Kefauver Committee very definitely said that Annenberg stepped out of it, and disassociated himself with certain people, if you are interested in facts.

BY MR. CRUIKSHANK:

Q. One of the important things is the reason for Mr. Annenberg's withdrawal in 1939.

A. No, you are not investigating 1939 --

MR. JOLLIFFE: We are entitled to investigate 1839 if we want to.

A. I am entitled to my own opinion.

Q. We are not interested in your opinion at all. You came forward and have given answers and information which we appreciate getting from you. We are really not interested in your opinion. We are interested in the fact that you say there is no connection at all between your company and the continental. You have testified there is no connection, and it may well be quite correct. It is, however, quite relevant that at one time there was a connection, and you have no right to suggest that is not a fair fact to bring out. It is very relevant and very interesting, as far as I am concerned.

A. It would be unfair if you investigated the Canadian Pacific Railway, and found that some person who was the President of it one hundred years ago, did something which was wrong.

MR. CHAIT: Mr. Chairman, if there is any question as to whether there is any connection, I would like to be sworn, because I think I have a little more knowledge of it than Mr. Perlman has.

THE ACTING CHAIRMAN: We can consider that.

BY MR. JAMES:

Q. I would gather, from reading this report down further that there was a question in the minds of the Kefauver Committee, when McBride took over?

A. One of the most significant and the most profound facts is that the Kefauver Committee must have been completely satisfied, because they did not call us. Surely, if this Kefauver Committee, with this vast investigation which lasted for months and days -- if they thought this organization was in affiliation of that kind, they would have called upon us for that information.

Q. Certain members thought it was hopeless, probably, that you had covered your tracks too well?

A. That is an insinuation.

Q. I have a feeling that the Kefauver Committee thought that McBride represented your firm, in carrying on the business.

A. That is an inference which is entirely erroneous, and is without any justification.

Q. It is right in here (indicating).

MR. CHAIT: May I be sworn, if there is any question about that?

THE ACTING CHAIRMAN: Is there any objection?

MR. GRUMETT: After we finish with Mr.

Perlman.

MR. CHAIT: If there is any doubt in the Committee's mind, I would like to be sworn. Otherwise, I would not want to take up the Committee's time.

THE ACTING CHAIRMAN: We will be recessing very shortly.

BY MR. JOLLIFFE:

Q. I do not think you should get unduly excited in regard to questions which may appear to you to contain implications which are painful to you. We are trying to get at the facts.

A. That is a challenge to my veracity.

Q. No one is challenging your veracity. As I understand your evidence, you were not connected with this Company between 1936 and 1939?

A. That is right, but the point is that I want to com-

pletely dispel any inference or any idea that in the last few years -- certainly not in the years I have been associated with this company -- as a publisher of this newspaper and of the Philadelphia Enquirer, neither this paper nor the Philadelphia paper has had any relation whatsoever with them, or with the news they disseminate. I know we have had no connection whatsoever, and no individual associated with us has had anything to do with it.

If we found out we had any person who was connected with it, he would not be employed for five minutes.

Q. You are not the owner?

A. No, but I am in complete charge of the operations.

Q. You cannot testify as to what other interests, the ownership of your company may have?

A. Yes. In this respect, I can.

Q. How can you?

A. Because Mr. Annenberg and I are very closely associated, and I know what Mr. Annenberg's opinion is; in fact, I operate under his instructions in relation to this. We have leaned over backwards to make sure that nothing ever happened which would embarrass this company in relation to the wire service. It is completely under the instruction of Mr. Annenberg, who would not countenance that for

one moment.

He spoke to me when I took this job, and told me if I found that any person in the employ of the company had any connection direct or indirect with the wire service, or gave any information, even of the most innocent nature, he could be discharged immediately.

Q. You are referring to the Continental Service?

A. That is right.

Q. Is it fair to infer, Mr. Perlman, that Continental now is something of a rival of yours?

A. None whatsoever. We are not in the business they are in at all, not in any shape or form. We are not interested in that type of business at all. We do not sell that type of business.

Q. What do you mean by "that type of business"?

A. We do not sell fast service to newspapers or others. We do not supply that business for anybody. They would be competitors with us if we were trying to sell racing service to bookmakers. But that is completely wrong. I have no information other than the Kefauver Committee, in regard to what I have said as to the way we do our business. I can only give you the evidence that we

are in the publishing business, and they are not.

Q. Some of their affiliates are in the publishing business?

A. Not of a type that is any rival to us, other than any newspaper.

BY MR. JANES:

Q. It is a peculiar thing that Mr. McBride stepped in, and Mr. Annenberg stepped out, and there was no money changed hands.

A. That is part of the settlement that was made in relation to the income tax, and Mr. Annenberg had to completely withdraw from this wire service.

BY MR. JOLLIFFE:

Q. That was back in 1939?

A. That is correct.

Q. At that time, in 1938 and 1939, was the Racing Form being published here?

A. Yes, I think the Racing Form has been published here since 1923.

Q. With a similar arrangement as to the loops?

A. I have no information whatsoever on that. I had no association with that company at that time. My

association with the company only dates back to 1943.

BY MR. GRUETT:

Q. Have you any information as to the growth or decline of the circulation of the Racing Form?

A. I have not it with me. I could obtain it, of course. I would say the increase has been at about the same ratio as the daily newspapers.

Q. What is your circulation to-day?

A. In Ontario to-day, I cannot tell, but I think it would be approximately 5,000 a day for the whole country. That is, our total circulation.

Q. 5,000 only of the Daily Racing Form?

A. Yes, the only paper we have.

Q. You maintain that is the circulation you have?

A. Approximately that.

BY MR. JOLLIFFE:

Q. Are you sure about that, Mr. Perlman?

A. That is in Canada.

Q. Your Daily Racing Form is, in fact, the Canadian Edition?

A. Yes.

Q. You say its circulation is --

A. I say approximately 5,000. That is pretty close.

Q. At 35 cents a day, your market is a little limited.

A. It is, I suppose, except we make the public pay for it, instead of the advertisers.

Q. You do not carry much advertising?

A. Our advertising is chiefly from breeders and race-tracks who advertise race meetings. There is some general advertising. We do not go into it much, because we have a limited capacity of our presses here, limited to 32 pages.

Q. Can you tell me this, Mr. Perlman; how does the circulation of the Canadian edition compare, for instance, in January, with the month of June?

A. It is much lower. As I have said before, we have always operated at a loss in the winter-time. It is not very much, but we have lost money from the time the racing closes in the fall, until the season opens again in May.

Q. How much lower?

A. Oh, approximately 50%.

Q. That is also an approximation?

A. Yes, of course when Woodbine is running, our circulation goes up to 8,000 or 9,000. When there is racing

in the city of Toronto, it goes up a little.

BY MR. HOUCH:

Q. Mr. Perlman, I would be very much interested in knowing your opinion of legalizing book-making?

A. I have not come to definite conclusion about that, but I will give you some observations. I would not want you to take this as my final opinion. But I think a great deal of consideration should be given to it, for this reason; that the history of crime in the United States -- and to some extent in this country -- certainly dates back to Prohibition --

BY MR. JOLLIFFE:

Q. You mean there was no crime before prohibition?

A. Not to the same extent. Organized crime in the United States apparently started with Prohibition. In fact, these racketeers and mobsters were all relics of the Prohibition era --

Q. Oh, no, are you sure about that?

A. They were relics of the Prohibition era.

Q. Did you ever hear of the Tweed gang?

A. That is political corruption. This is not that.

Q. That was a form of crime which was very highly

organized.

A. I think it is very definitely accepted as a fact that the Capone era was certainly created by Prohibition. I think it was definitely proven that you cannot legislate people into morality. If the people want to do something -- if you pass a law which is contrary to the wishes of the people, the people will not follow it. The legitimate people will not enter into the spirit of the law, and you provide a big business for criminals. That happened in Prohibition.

In Britain they had a special Royal Commission to investigate betting there, and their conclusion was that in England, because there was a form of legal betting, it did not create crime, and their recommendation was that they should continue it on a legal basis.

I think a lot of thought should be given to it. I have not made any final conclusions. In fact, I have always been opposed to it, but I think some consideration should be given to it, but the bookmaker does not make the bettor; the bettor makes the bookmaker.

THE ACTING CHAIRMAN: It is now about one o'clock, and the Committee will adjourn to re-convene at 2.30.

---The witness temporarily retired.

---Whereupon at 1.00 o'clock p.m., the further proceedings of this Committee adjourned until this afternoon at 2.30.

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A F T E R N O O N S E S S I O N

Toronto, Ontario,
Tuesday, July 24th, 1951,
2.30 o'clock P.M.

The further proceedings of this Committee reconvened pursuant to adjournment.

All parties present.

Same appearances as heretofore noted.

THE CHAIRMAN: I will call the meeting to order. Mr. Perlman, will you proceed?

JOSEPH SAMUEL PERLMAN

A witness previously heard and now recalled, who having been already sworn, continues his testimony as follows.

THE WITNESS: I am Mr. Perlman and I testified this morning, and am back again to resume giving the evidence.

MR. JOLLIFFE: The Hon. Attorney General, (Mr. Porter) did not have the advantage of hearing your testimony. He does not know what he missed.

THE CHAIRMAN: I will not ask you to go all over it again, because we will have the opportunity of reading it.

BY THE CHAIRMAN:

Q. You were making a statement?

A. No. Well, I made an oral statement, and then I was subjected to questioning, which I think lasted for quite a while.

THE CHAIRMAN: Perhaps there may be some further questions.

MR. DOWNER: I understand there were some questions this morning. Unfortunately, I was absent this morning. I am very sorry about that. But I understand there were some questions this morning about the paper, as to why it was published when there were no races running in Ontario - during the winter time.

THE WITNESS: Yes. That question was asked of me. Shall I repeat my answer to that?

BY MR. DOWNER:

Q. Yes, if you please.

A. For the same reason that all daily newspapers publish racing news from outside racetracks, when there are no races here.

At the present time, I think that all of the

Toronto newspapers are carrying news from a number of the major racetracks in the United States. When the Ontario season is over, they continue to publish entries and selections and news of racing in the United States.

It is a matter of news, and, as I pointed out this morning, we do that as a service to the people interested in thoroughbred racing.

Q. Would it not be that the newspapers report -- and your paper reports -- would be only of value to those who are betting?

A. I went into that in great detail this morning. I cannot accept that, of course. Because we have only one purpose. Our intention is to cover racing with the utmost integrity, and with the greatest volume of news, and the finest reporters we can get.

Q. In other words, you only give a little detail as to the background of the horses, the weights, and that sort of thing?

A. We are doing the best that has been done any place in the world, and we contribute a great service to breeders and owners.

Q. Do you think the people would buy this paper if they were not interested in betting?

A. Would they buy the paper?

Q. Yes.

A. I do not really know. I do not think that is a question I could answer.

The only thing I can say this pertains to all news published in the newspapers in relation to sports. The intentions of the people who read them may be entirely different from the intentions for which the newspaper is published.

Q. In my humble opinion, there is no real value in this paper when the races are not running here.

A. To a man interested in racing, it is of great value. A man who is interested in baseball likes to read about it all the year around, and the man interested in racing, and news concerning racing, finds that racing news in the winter time is of equal interest to him. All the newspapers in Toronto accept that fact. All the great papers in the United States do, the New York Times, the Herald-Tribune, and others, and they publish charts, and they expect that if a person is interested in racing in the summer time, he will be equally interested in the winter time. This is news because he is much interested in what is going on.

BY THE CHAIRMAN:

Q. Does the circulation of this paper remain constant fairly throughout the year?

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A. No, I would say it is fifty percent. higher in the winter time than when racing is on in Ontario.

Q. The Sporting News publishes all the year around?

A. Yes, and they publish baseball results no matter where they come from. The box score of a baseball game is no different than the chart in a Racing Form. It is used by people for betting purposes.

If you report in the newspaper that "Joe" Demaggio has hurt his ankle, that is information which could be used for betting purposes, by anyone who would be interested in the Yankees.

BY MR. DONNER:

Q. Where do you get your information and results?

A. I went into that this morning. We get it from our own wires, but not with any great speed, because we are not interested in fast service. All our papers are published in the evening, and we do not publish anything until everything is complete.

The results are sent in race by race, and it takes from twenty minutes to half an hour to compile the chart, and send it over the wires.

BY MR. JOLLIFFE:

Q. How do you get the California results?

A. When we go to press, you may have noticed we only have one or two California results. The rest of the results are published the following day. They are a day late. In fact, sometimes they are thirty-six hours late.

Another point I would like to mention is that in the winter time -- perhaps not to any great extent -- but you do have people here who send their horses west, and they are much interested in the news from the west.

If a person is interested in racing, he wants to read about it, as much as any person interested in any other sport.

BY THE CHAIRMAN:

Q. It would be very much like other papers, for instance, the hockey news?

A. That is right. In the United States, on the basis of the evidence I gave this morning, the newspapers there -- I do not know to what extent it applies here -- but over there they publish information on every sport played, on boxing, golf, hockey, baseball, and even tennis.

I quoted from the New York Times this morning, that the United States Golf Association in the United States brought out the fact that one of the great

problems they have is organized gambling on golf. And if a person gets news as to how the golfers are playing, that is information upon which he bases his action.

I should very much like you to read my testimony, because I was so emphatic on one point with which I am mostly concerned, and that is, the fact that our organization has not the faintest affiliation or association or any business connection whatsoever with any wire service. That is a fact I came here to tell you, and I will submit myself to any amount of questioning to dispel that point.

BY MR. JANES:

Q. I am informed by the police that they only know of one book on baseball or any of these other sports.

A. Then they are not very vigilant. You should start an investigation as to why they did not find out more than that.

MR. HOUCK: I think they have more of that in the States, than they do here.

MR. VILLENEUVE: Yes, I think that is right.

THE WITNESS: I have gone to the Maple Leaf Gardens, and have seen about \$20,000. changing hands.

BY MR. JANES:

Q. They were not bookies.

A. Oh yes, they were. When you see one man taking all the bets.

THE CHAIRMAN: You must have been in the wrong corner, Mr. Janes.

MR. JANES: No, I do not think so.

THE WITNESS: Have you been any place in the city where you saw a man making a bet on the horses?

MR. JANES: I am not that stupid not to know what is going on.

THE WITNESS: Unfortunately, in racing -- because there is a legal aspect to racing, the situation has become very distorted, and racing has become the scape goat and I feel very keenly about this, and I think my feelings are shared with people on the legal side of betting, but certainly not the illegal end of it.

Q. I have never noticed anybody taking bets on hockey games, but when you go to horse races, you see everybody making bets.

A. You do not have organized betting, that is true. You will admit there is betting on fights, and other

forms of sports, but I defy you to find where it takes place. You must not forget that this business is clandestine. People who do it, do it in a very quiet way and if you looked at them, you might think they were saying their prayers.

MR. GRUMMETT: They might need some prayers, too.

BY MR. DOWNER:

Q. If this information was not in favor of the betting public -- or the public generally -- then they would not have the information and they would not be able to bet, and it would cut down the betting considerably.

A. I think it goes deeper than that. If you did not have any hockey games or baseball, and no racing, you would cut down the betting. The only way to eliminate the headache is to cut off the head.

BY THE CHAIRMAN:

Q. What is the head?

A. If you want to eliminate anything, you have to eliminate it all. You cannot stop betting. The biggest problem they have in the United States is the numbers game. The only way you can close that up, is to close up the stock exchange, because these numbers are based

on certain combinations of numbers from the stock exchange.

Q. It is not our business to consider ways and means of stopping betting; it is our business to consider ways and means of strengthening the arm of the law in dealing with illegal betting, which is quite a different thing.

A. In my opinion, you cannot solve that problem by creating a censorship over the reporting of legal activities. That point has been discussed and gone into --

Q. I would say that is a very sound point. That is the way it strikes me.

A. It goes very deeply --

Q. But that is quite a different thing from the service rendered by some of these wire services about which we have heard here.

A. That is very true.

Q. Which could only have one purpose. It would not be in the general interest.

A. That is correct.

Q. It was for one purpose, and one purpose only, and the inference seemed to be that it was probably used for the illegal betting activities. Without that wire service, the illegal betting would be limited, to a very large extent. That is the picture which was

painted here to us.

A. That is right, and that is the picture which the Kefauver Committee found and upon which they based their ultimate recommendations and legislation. They left the newspapers and the legitimate news services strictly alone.

In fact, I think the attitude of the newspapers in the United States in relation to that is very well put in an editorial, which reads as follows:

" A Bill aimed at hampering bookmakers' operations by prohibiting interstate transmission of gambling information about horseraces and dog races was approved last week by the Senate Interstate and Foreign Commerce Committee.

This is a dangerous bill regardless of the high ideals and motives which prompt it.

This legislation would be an outright invasion of our cherished freedom of information and freedom of news transmission in this country. It would set up barriers at state lines preventing dissemination of news across those invisible borders which legally could be disseminated within the state.

It makes little difference, in our opinion, what type of news is prohibited. In this instance,

it happens to be gambling information. It might just as well be a ban against interstate transmission of stock tables, or commodity market data, or Federal Reserve figures which are used in some places as the basis for payoff in the numbers racket.

The point is that one category of news will be classified as taboo -- untransmittable from one state to another. Once we start to classify information erecting barriers against different categories then we will have taken a big step toward destroying the First Amendment".

I think that is basic. We do not give the public any information of that kind. We report only what happens at the racetrack, which is a legal activity and the greatest sport, to my mind, and in the minds of many citizens in the world, including, in the British Isles, the Royal family and the Prime Minister.

THE CHAIRMAN: And including, no doubt, some of the members of this Committee, although I have not been able to find out which ones.

BY MR. JANES:

Q. The information as to which are the best horses, would be good information -- which ones are

going to win.

A. I would not call that "special". It is accepted by every newspaper in this country as news. It would be special if we published it, and other people considered it as taboo, but even that would not be final, because the opinion of what is news differs with different papers. I see stories in the tabloids very often which consider I do not particularly as news.

BY MR. DONNER:

Q. Are the scratches listed in your paper?

A. No. We come out fully fourteen hours before the scratches, jockeys, or anything like that. We disseminate no information to any group in the province of Ontario. Everything we get is used entirely for publication in the Racing Form.

Q. So there would be no serious objection if none of the lists of scratches were given out?

A. I can only answer that by saying we do not do it. That does not mean I have any objection to it. If we decide to publish a morning edition, we would do it, as all the papers in Toronto do. I think the list of jockeys is no different than publishing the line-ups of a baseball team.

But I have a great objection to racing being treated any differently than anything else. It has

supervision such as no other sport has. The province of Ontario derives a great deal of revenue from it. I think the ideas of the Racing Commission are good ideas. They are supervised very well, and are making changes which are for the benefit of the sport, except in one point, and that is taxation, which is too large a percentage of what is taken in.

The important fact is not that a man bets \$100. but that you take \$20. away from him before he bets. I think the taxation in this province is much too high in relation to the revenue, because statistics in the United States prove that increased taxation reduces the volume of betting, and the public still pays as much but they have much less chance and therefore, the state derives less benefit.

It gives to the bookmakers a great advantage, because the bookmaker has the same advantages as the racetracks.

BY THE CHAIRMAN:

Q. In other words, if there was no tax, the bookmakers would disappear?

A. That is very profound. If the people could pay \$10. admission to a racetrack, that would pay all the expenses, and there need be no taxation.

BY MR. JOLLIFFE:

Q. Do you happen to know what the population of New Jersey is?

A. I am not sure, but in relation to wagering, you would not have a good point, for this reason; that the bulk of the betting at the racetracks in New Jersey comes from the city of Philadelphia, which is in the State of Pennsylvania, and which has a very large population from which to draw the crowds.

Q. I do not know that you do know what my point is. I would not think it would be very different from that of Ontario, but New Jersey appears to get more money out of racing than Ontario.

A. Because their volume of betting is far greater.

BY THE CHAIRMAN:

Q. Some of the racetracks in New York --

A. The point I want to make is why the racetracks get so much revenue. For instance, Garden State Park, at Camden, handles one and one-half million dollars a day, and the largest percentage of that comes from Philadelphia, with probably a population of five million or more.

Monmouth Park gets seventy percent. of their people from New York, and Atlantic City draws

people from both Philadelphia and New York, and in Florida they get ninety percent. of their revenue from people who visit the State of Florida, Miami Beach and so on.

BY MR. JOLLIFFE:

Q. How many tracks are there in New Jersey?

A. Three and they have a total of about 150 days of racing.

Q. Three tracks and 150 days of racing, and the State of New Jersey is getting nearly twelve million dollars a year?

A. Yes, and their take is only 12%.

BY THE CHAIRMAN:

Q. That is taxation, plus the take of the track?

A. The track gets six percent. and the State gets five percent., and then there is the breakage which amounts probably to another one percent.

Q. There is a much larger population?

A. Yes. But in New York they used to take ten percent; they increased it to fifteen percent., when they gave five percent. to the counties such as New York and Saratoga, but in three years it went down one percent.

each year, and now they are going to reduce it again to ten percent.

BY MR. HOUCK:

Q. What about the betting this year?

A. It is up over last year, about ten percent.

BY MR. JOLLIFFE:

Q. You have not noticed the industry going into a decline because of the taxes?

A. I think it would be very unhealthy if racing was not taxed --

Q. My question is, you have not noticed any decline in racing in recent years?

A. No, in fact, it is completely the other way. Last year racing outdrew baseball by a big margin.

Q. So it follows it is not being killed by taxation?

A. No, but it has been hurt in many states by excessive taxation.

BY THE CHAIRMAN:

Q. You mentioned one state -- I was not sure which one -- where you said there was ten percent more racing

this year than last year?

A. No, ten percent. more betting.

Q. Oh, excuse me. Which state was that?

A. New York State.

Q. And what did you say about the taxes in New York? Have they been changed?

A. No. The tax was changed about five years ago, and now they are in the process of eliminating one percent. every year.

Q. So the increase of ten percent in betting had nothing to do with any reduction in taxes?

A. No.

Q. Because there has not been a reduction in taxation in the last year?

A. No.

Q. So when we are told that the results have been an increase in betting, was because we reduced the tax, but the revenue from it is greater from it than last year so far?

A. I think it has helped --

Q. I do not know the percentage of increase in betting, but it may be that taxation has nothing to do with it at all -- . In New York, there was no change in the tax, and there was an increase of ten percent; in Ontario, there was a reduction of the tax,

but I doubt if the increase was any more than the increase in New York.

BY MR. JOLLIFFE:

Q. Do you think the average bettor has any idea of what the tax is?

A. Except that his money disappears less fast. It stands to reason if you paid a certain amount of money, by the time you get down to the seventh race, the public will have a lot of money bet, and he will have lost considerably, because you are taking off twenty percent. If you took off fifteen percent. the public would have that much more money. With the twenty percent., you are not giving the public much of a chance at a racetrack.

BY THE CHAIRMAN:

Q. You have to get a percentage of tax where it brings you the greatest revenue --

MR. JOLLIFFE: That sounds like the Provincial Treasurer.

THE CHAIRMAN: Whatever that point may be, whether it is up or down, or in between --

THE WITNESS: I will tell you, if you want to study it, if you will get your Chairman of the Racing Commission and someone from the National

Association of state racing commissions, who have made a very complete survey of the effect of taxation on wagering, you will find it most interesting.

THE CHAIRMAN: I daresay the Treasury Department is thoroughly versed in that. I do not know that it is the duty of this Committee to consider that aspect of it, especially.

BY MR. HOUCK:

Q. The Fort Erie meeting has been closed, and it is now the Ascot meeting, and they were up eighteen and a half percent. over last year.

A. Then you are up probably ten percent. above what the trend is; the trend is around eight or ten percent.

BY THE CHAIRMAN:

Q. We did reduce the tax; would you say that it conceivably had something to do with it?

A. I am positive it had.

Q. You say it stands to reason there is more money in the pocket to bet, because less is taken out of their pockets?

A. Not only that, but it affects your attendance too, because a large percentage of the people cannot stand it very long.

BY MR. JOLLIFFE:

Q. The reduction was not very substantial.

A. About two percent.

BY THE CHAIRMAN:

Q. We often wonder why people bet when things are against them.

A. It is a good deal like something that was once said, where one man said to another "Do not play in that crap game; it is fixed", and the other man said, "I cannot help it, it is the only game in town".

I think that is the psychology of it.

BY MR. JANES:

Q. Do you think the public consider the tax?

A. They do not, but they are relieved of their money. It is like an anesthetic; you are out, but you do not know it. You are out in the long run, because the public is affected. That has been proven very conclusively.

I think the tax on racing should never be above twelve percent. If you reduce it to twelve percent. the racetracks would take less, because the betting would be up. If the province got five percent, and the racetracks seven percent, the public would

benefit by it.

The thing that is against them is not that they cannot pick the winners. If it was understood that he would realize after he bet \$500. he had to lose \$100., because twenty percent. was taken away from him --

Q. Look at the less agony. He loses his money that much quicker.

A. Some people subsist on that agony.

BY THE CHAIRMAN:

Q. If he had \$50. in his pocket, he would bet on some other race.

MR. GRUMETT: And lose it all.

THE CHAIRMAN: He might think he would do the opposite.

THE WITNESS : Most people who go to the racetrack bet a very limited amount of money, and it lasts a certain length of time. If the tax takes less, the money lasts longer.

BY MR. HOUCK:

Q. Is it a result of the scare thrown into the people by the Kefauver Committee, which has increased the betting at the tracks, and stopped the gambling at the tracks -- the illegal gambling?

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A. It may have had that effect, but I rather doubt it. I think it had some effect. There is no doubt that some people would bet -- outside of New York, there are a lot of people who, if they have not any big bookmaker, will put the money in the track.

I think it is a big mistake to promote any open betting in that town, certainly when the races are on, because the government loses money on it.

The big problem I find is that they lose their money to the bookmakers who are operating within the confines of the racetrack. To curb that, I think the tracks have done a great job. The Thoroughbred Association, headed by Spencer Drayton has done a good job in keeping them out. Your Association here has received every co-operation from Marshall Cassidy, of the Jockey Club.

I was in with your racing Commissioner Bigelow, and he has received a lot of ideas in regard to the enforcement of laws to keep racing clean and honest, and to prevent skulduggery.

BY MR. DONER:

Q. What is the circulation of the Racing Form?

A. It is now about 5,000, but it would be quite a bit higher when there is racing in Toronto. A great

1907

Perlman

deal of the circulation would be at Fort Erie and at Connaught Park.

Q. Do you sell this service to the daily papers?

A. We do not sell service to the daily newspapers at all.

Q. Not in Canada?

A. No. They receive their information --

Q. You sell the selections?

A. Actually, we do not sell them. They are sold by the Chicago Tribune, and the New York Daily News Service.

Q. In other words, you sell to them?

A. That is right, we sell to them.

BY MR. JOLLIFFE:

Q. Undoubtedly, your selections reach the newspapers?

A. That is right.

BY MR. DONNER:

Q. I notice there are ^{very} few advertisements in this paper (indicating), therefore, the revenue must come entirely from the sales of this paper.

A. That is right. The difference between us and the daily papers is they have a large amount of advertising.

1908

Perlman

BY THE CHAIRMAN:

Q. What do you charge for your paper?

A. Thirty-five cents.

Q. Nearly ten times as much as charged by the ordinary daily papers?

A. Yes, but if we do not have the advertising -- the Readers Digest has no advertising, and they charge twenty-five cents --

BY MR. JOLLIFFE:

Q. They have advertising now.

A. They do not in the United States. You probably get the international edition here.

BY MR. JANES :

Q. About fifty percent. of it here is advertising.

A. In the United States, they still do not. I think they have an agreement in the United States not to because they could not get these articles without charge from the various magazines if they started advertising. They would then become competitors.

BY MR. DONER:

Q. Where do you get all this information about horses, and weights, and so forth?

A. That is released from the racetracks. That is

1909

Perlman

not exactly "information"; it is actually the reports on the horse races. This (indicating) shows you every horse in a race and how it ran.

EXHIBIT NO. 119 - Copy of
Boston American, dated
Friday, Apr. 13th, 1951, as
Identified by the Witness
Perlman.

(PAGE 1910 FOLLOWS)

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Perlman

Q. I am thinking of the past performances?

A. They come from these charts (indicating).

.. You get that yourself?

A. We maintain that ourselves, yes.

Q. You do not sell that service?

A. We do, in the United States, supply the Associated Press, the United Press, and the International News Service with information. They distribute our newspapers in New York, and the Associated Press has a co-operative arrangement, whereby we have a leased wire to the race-tracks, and it has drops to newspapers such as the New York Times, and Herald Tribune -- in fact, nearly all the newspapers in New York City take these charts.

Also, in Philadelphia, they take the New Jersey races, and all papers in Boston take the New England races.

Q. How many telephones have you in the Racing Form?

A. Oh, just two or three. We do not supply anything over the telephone. Our telephones are used entirely for business purposes. We give no information of any kind to anyone.

Q. How many employees will you have in Toronto?

A. I think we have about fifty-five.

Q. I think you said about sixty, this morning.

A. At this time of the year, it may be sixty, because we are at the peak, and as I said before, they are all members of various unions, the typographical union, the stereotypers union, the pressmen's, the Newspaper Guild, and so forth. All of our employees belong to unions, except the executives.

Q. You sell around 5,000 copies a day?

A. Yes.

Q. That is approximately .25.00 per man per day -- per man in your employ?

A. I think it amounts -- what are you trying to establish?

Q. Just where your profits come in from the sale of your paper.

A. Where our profits come in from the sale of our paper?

Q. Yes.

A. That would be very easy to establish. They come from the sale of the papers.

BY MR. GOODMAN:

Q. 5,000 a day is 30,000 a week, and at 35 cents, that would be \$10,000 a week, -- that is, income.

A. You can readily see that there is a chance for profit. Let me understand your point, and I will answer your question. You feel that possibly revenue gained from all sources? There is absolutely no revenue of any kind whatsoever from any other source. We show a profit, and we pay our income tax, and we have to pay a portion of the cost of gathering in this information from other offices.

Q. Your costs must be terrific, and you stated you were selling five thousand copies per day, and you have about fifty employees, so if you divide your sales by the number of employees you have, that would allow you about twenty-five dollars per man, but then you have all your other expenses. How are you going to pay them sixty dollars a week --

THE CHAIRMAN: Twenty-five dollars per man per day.

THE WITNESS: What makes you think that every man should average twenty-five dollars a day? They get about fifty dollars a week. It is a very simple thing. If you have a revenue of ten thousand dollars, plus a certain amount of advertising revenue --

1913

Perlman

BY MR. GRUMITT:

Q. You have no advertising there.

A. The labour cost is heavy and the newspring cost is not so heavy, because we do not use much of it --

BY THE CHAIRMAN:

Q. Ten thousand dollars a week; that is forty thousand dollars a month; would that be more in different seasons?

A. When Woodbine is running, we probably sell close to fifty thousand papers a week.

I think it is unfortunate that this type of information should be brought out in this hearing, because I do not think the profits of the business of this company should be made public information. I think you should afford us the same privacy you would any other.

If this committee would like to look at our financial statement and our circulation, they can definitely be made available to you, but it should be very obvious. Our average circulation could be higher than five thousand. How many days' racing have you in Toronto?

Q. What I was questioning about your statement

this morning is this; you sell about five thousand issues of the paper; I cannot see how you can exist on the profits from five thousand copies a day.

A. That is the point you asked me about. You asked me what our circulation is, and I said from five thousand to fifty-five hundred per day.

Q. I do not think you specified the figure at this time or this morning when giving evidence.

A. Oh, yes. You asked me what the present circulation was. I think there are approximately four weeks at each track, and you have four tracks, which is 16 or 17 weeks of racing, which constitutes about one-quarter of a year, and during that period our figures would be closer to ten thousand dollars.

I am giving you this statement under oath, that this company makes profits and receives no revenue from any other source.

I will admit that it could not exist, if it was not part of another organization. This paper is only charged --

Q. That is what I want to find out, whether or not you were carrying the full cost, or whether some other concern paid a part of it.

A. Nobody pays for it. It is done on a percentage basis.

1915

Berlman

This paper pays its costs on a percentage basis, in relation to the over-all circulation of the newspaper. If this paper had a circulation of one thousand per day, it would pay two percent. of the total cost. That is the basis upon which we work.

BY I.R. DO NER:

- Q. This is part of another publication?
A. Yes, this is a wholly-owned subsidiary.

BY I.R. HOUCK:

Q. I think you said you operated at a loss when there ~~was~~ no racing in Ontario?

A. No.

BY I.R. DO NER:

Q. You have practically a monopoly on the information on the whole of this continent.

A. I would not call it a "monopoly". There is nothing to stop any newspaper from doing it. We happen to be the only ones who are doing it, for a good reason. If we sell a chart for .25.00 a week, or .50.00 a day, it might cost us .300.00 a week to gather it together.

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Perlman

BY I.R. JOLLIFFE:

Q. This may not mean anything, but what about the name in Canada, "The McMurray Publishing Company"; where did that name have its origin?

A. Mr. W. J. McMurray started this company, and they named the corporation after him.

Q. Was he a Toronto man?

A. No, he established residence here, but I think he was associated with the late -- our company did not own this business when it was founded. I am not positive of that, because I was not here, but I think it was started by a man by the name of Brunnell, who founded the Racing Form in 1894, and eventually sold it to the present ownership.

This paper has been going without interruptions since 1894, while the Morning Telegraph, which we publish, has been publishing without interruption, since 1833. So this paper has a tremendous amount of history behind it, and also a tremendous amount of prestige in Ontario.

BY I.R. DOWNER:

Q. The original people behind the thing were the Annenberg family?

A. Not the original people behind it, but they are the present owners. I might say that Walter H. Annenberg who is president, has done a great job, not only in his policy in relation to his paper, but also as a citizen, and editor and publisher of the Philadelphia Enquirer, where he obtained a great reputation as a public man.

Q. Then the information you sell to the newspapers would be available also in the scratch sheets?

A. No. We do not handle the scratch sheets, because we publish our paper, and it is printed the evening before, and the scratch sheet publishes the official scratches, and the jockeys, which is not available until about nine o'clock in the morning. We would have to publish a morning edition to contain that information, which the Canadian newspapers do. I am not disparaging that, because I think from a standpoint of news, if a man is interested in racing, the scratches and the jockeys are as important as the line-ups in a ball game.

Q. And this information would be available to them the same as it is now, only they come out at a later hour?

A. That is right. Any newspaper which is a legitimate newspaper, can get the facilities of the race-track,

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Perlman

but the race-track very carefully screens the people who come into the Press box. You have to be screened as to your integrity, and in regard to the type of paper you publish. There is no question if it is an accepted newspaper, because no matter what a paper like the New York Times wants to say about racing, their position in the Press box is automatic, but there are a large number of other newspapers who do not get in, without being screened.

BY MR. DOWNER:

Q. It has been the general impression that the bookees pay off according to the amount set forth in the Racing Form.

A. I doubt whether that would be true. The afternoon papers publish the results of the races before we do, and I think there is a racing broadcast here every thirty minutes, which gives you the same prices. I doubt if anybody would want to wait that long. They might want to check later to see if it is right.

Q. You do not broadcast anything?

A. We have no broadcasts at all, no.

BY THE CHAIRMAN:

Q. Is there anything else anyone wishes to ask

of Mr. Perlman?

---(No Response)

If not, thank you very much, Mr. Perlman.

THE WITNESS: Thank you very much, gentlemen, for giving me the opportunity to testify, and I want to thank you for your patient restraint at times, because I am very sensitive to any allegations against this company. I take a tremendous amount of pride in these newspapers; they are papers of great integrity, and they have received such recognition, that any innuendoes in relation to our operations, I am very sensitive about that that is why I was anxious to come here and dispel any erroneous ideas.

I really appreciate the opportunity. Thank you.

---The witness retired.

THE CHAIRMAN: We will recess now for five minutes.

---Whereupon a short recess was had.

- - - - -

(Page 1920 follows)

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Lennox

---Upon resuming.

Oswald Elmer Lennox,

A witness being called and duly sworn,
testifies as follows:

BY THE CHAIRMAN:

Q. Mr. Lennox, you are the Securities
Commissioner?

A. Chairman of the Ontario Securities Commission.

Q. Chairman of the Ontario Securities
Commission?

A. Yes sir.

Q. Of the Province of Ontario?

A. Yes.

Q. How long have you held that position?

A. I have held that position for three years and nearly
a month.

Q. And prior to that time, were you
connected with the Commission in any way?

A. I was Vice-Chairman, when a Vice-Chairman was
appointed, until the 1947 Act. Prior to that, I was
a member of the Commission, during the year 1946 and
part of 1947.

Q. And your duties and functions are outlined

in the Securities Act?

A. They are.

Q. Now, the Security Act, as we have it now, and under which you are carrying on, was an Act passed in what year?

A. It was passed in 1947, and proclaimed on the 9th day of March, 1948.

Q. Prior to that, there was a series of Security Acts and Securities Frauds Prevention Act, which went back to --

A. 1928.

Q. Now, I do not know that at the moment, I want to go into any of that prior legislation. Some of the members of the Committee may have some questions in mind about that later on. But, at the present time, Mr. Lennox, who are the other members of the Securities Commission?

A. Mr. Marriott, the Senior Master of the Supreme Court of Ontario is Vice-Chairman, and Dr. Rickeby, the Deputy Minister of Mines, is the other member of the Commission.

Q. Under what section of the Act is the Commission set up?

A. Section 2.

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THE CHAIRMAN: I might just refer to it as Chapter 351, revised Statutes of Ontario, 1950, Section 2(1);

"The Commission shall be composed of a Chairman, and not more than two other members, one of whom shall be designated as Vice-Chairman, who shall be appointed by the Lieutenant-Governor-in-Council.

"(2) The Chairman shall devote his full time to the work of the Commission, and the other members shall devote such time as may be necessary for the due exercise and performance of the powers and duties of the Commission."

BY THE CHAIRMAN:

Q. In addition to the members of the Commission, are there a number of employees of the Commission, also authorized under the Statute? Is that correct?

A. That is correct. The Registrar of the Commission's appointment is provided for by statute.

Q. And that appears in Section 4;

"The staff of the Commission shall consist of a Registrar and such other officers, clerks,

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Lennox

stenographers and employees as the Lieutenant-Governor-in-Council may appoint".

A. Yes.

Q. Now, Section 3 outlines the duties of the Chairman of the Commission?

A. Yes.

THE CHAIRMAN: It might be worth looking at that;

"(3) The Chairman, and in his absence the Vice-Chairman, may exercise and shall perform powers and duties vested in or imposed upon the Commission by this Act or the regulations, but every direction, decision, order or ruling of the Chairman or the Vice-Chairman, shall be subject to review by the Commission and the Commission may confirm or revoke any such direction, decision, order or ruling or make such alterations therein or additions thereto, as a majority of the members deem proper."

BY THE CHAIRMAN:

Q. In other words, you, as Chairman, are entitled in the ordinary course of affairs to carry out the work of the Commission, subject always to a

review of any of your acts or decisions by the full Commission?

A. Correct.

Q. Consisting of three members?

A. Yes.

BY MR. HOUCK:

Q. How often do you meet as a Commission?

A. Wherever there is an appeal from a ruling of the Chairman. Since January 1st, 1948, the full Commission had held ninety-three hearings to date.

BY THE CHIEF INVESTIGATOR:

Q. Then most of the work of the full Commission is in connection with hearings arising out of some particular case, which arises under the Act involving certain parties who have to do with shares or other financial transactions.

A. It is purely a matter of discipline. Of those ninety-three hearings, ninety-two of them have been purely matters of discipline. One of them was a dispute over releasing shares from escrow.

Q. Before going into that, perhaps we should have a more general statement of the functions of the Commission. I notice in the Act, the duties of the Commission are dealt with in a bit of a

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Lennox

scattered way; there are various Sections of the Act which impose duties of one kind and another upon the Commission.

Perhaps you can tell us, in a general way, and classify under general broad classifications, what the duties and functions of the Commission are.

A. Well, I think I should give a brief outline in the first instance of the basic principles on which our securities legislation is founded.

There are two recognized forms of control dealing with securities administration, the most common is the control over brokers or dealers who are licensed to sell securities.

The second form of control is a control over the issuing company.

Up to 1942, Ontario was content with a single form of control, namely, control over the dealers, with licensing and disciplining dealers.

In 1945, they extended the control to include control over the issuing company.

There are very many different forms of controlling issuing companies, / some of the older jurisdictions criticize, such as assets, values, earning power, dividends, and so forth, but we are still in the primary stage and we have adopted what is commonly known as the

1926

Lennox

"full-disclosure type of legislation", that is, "full, complete and plain disclosure" to use the words of the Act, of all material facts which indicate the merit or otherwise of an issue being offered to the public.

To my mind, that form of legislation is based on mining, and has been creating a false sense of security in the minds of the public. In my experience, I find that the sense of security in the minds of the public is one of the most difficult things to combat.

There is no real difference between the 1945 Act, and the 1947 Act, in principle, but the 1947 Act goes much further because of the full disclosure of material facts, that is now implemented by the filing of prospectuses which is largely dependent on the provisions of the Dominion Companies' Act. It is always difficult to get an up-to-date financial statement in the case of a mining company, and the engineers' reports. The Ontario legislation requires that the prospectus and other statutory material shall be delivered to each purchaser.

Our legislation is the same as the Federal legislation in the United States, as far as that is concerned, that is, as far as the full-disclosure goes, but they do not require delivering the prospectus.

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Lennox

So the functions of the Registrar, having in mind these two forms of control, are very wide because he receives the applications --

Q. You are talking about the Registrar?

A. Yes, the Registrar of the Securities Commission. He receives all applications for registrations of personnel, and receives the statutory material and checks it, and calls on the aid of the senior auditor in dealing with the financial aspects of the case.

If there is anything out of the ordinary, or any problem arises or any disputes, naturally I am brought into the picture, because I am the one responsible for the proper administration of the Act.

Q. In other words, the duties of the Registrar are, in the main, routine duties?

A. I would say the Registrar is the Sergeant Major, to use an army term.

Q. When there is any special decision to be made, it would have to come before you, or perhaps before the full Commission?

A. Very rarely a case like that would come before the full Commission.

Q. But, at any rate, it would have to come before you?

A. Yes.

Q. There is one thing I would like to get clear in laying the foundation for this evidence you will give. The original object of the securities legislation in Ontario, of course, was to prevent fraud in the sale of securities to the public. That was the principal purpose, and the original legislation was called, "The Securities Fraud Prevention Act".

A. That is correct.

Q. This is one of the examples of legislation to control activities of people who were approaching the public for their money, and giving in return something which is intangible, in the sense that they are giving shares or securities of some kind, rather than some tangible assets which a person can see and feel, or which a person can assess, and the whole object of this legislation is to make sure that the public who put their money into this sort of intangible asset is given the opportunity of obtaining full information about it?

Is that about the sum and substance of it?

A. Yes. There was another very important factor, having in mind corporate financing with a view of giving the public a fair run for its money. I refer to Section 44, and I think that Ontario goes farther than most other jurisdictions in this respect, because

it empowers the Commission to reject any filing in which an unconscionable consideration -- I am using the statutory term -- has been paid for property.

But I might point out that the usual practice in mining issues, is that somebody turns the property into a company, and receives a share consideration.

The Commission also can reject the filing where there is unfair consideration being given for promotional property. That covers a very wide field, as you will understand.

There is also a provision about making fair and equitable provision as to the escrowing of the vendor shares given for properties, because when escrow shares are freely sold in competition with treasury shares --

Q. Perhaps we can go into that a little more fully, as a separate item, because unless persons have been closely associated with the securities provisions, these terms are a little vague.

The original purpose of the securities legislation was to prevent fraud in the sales of securities; in other words, as far as possible, to prevent the sale of securities on a basis of misrepresentation, fraudulent statements on the part of

1930

Lennox

salesmen and dealers in securities, and you say, in addition, the Act goes farther than that, and you say that the result of the provisions in the legislation to --

A. Place corporate financing on a fair and equitable basis.

Q. Yes, that is right, and it is to control, to some extent, the actual financial transaction which is being presented to the public.

A. Exactly.

Q. That is, the price which is to be paid for the assets which the company is taking over, is one very important thing under this Section you have conceded you can control to make sure that is not entirely out of line and unconscionable, and you have outlined these two other things, to make sure there is not an unconscionable consideration for promotional expenses --

MR. GRUMETT: And for the purchase of the property.

THE CHAIRMAN: Yes, and for the purchase of the property. In addition to that, you mentioned the escrow stock. I think you had better deal with the escrow stock as a separate item, where we can go into it in a little greater detail.

1931

Lennox

But there are the two main items you have mentioned, the prevention of fraud and misrepresentation, by providing the fullest possible disclosure to the purchasers, and, in the second place, controlling some of the elements in the bargain itself.

A. Yes.

Q. Is there anything else you would care to add to that as to the scope of the main purposes of the Commission's activities?

A. Well, I consider another outstanding feature of the current securities legislation is that the Commission is empowered under the other Section -- I will give you the Section in a moment -- to make an audit of any company's affairs, whether the company is currently qualified, or whether they ever have been qualified with the Commission.

Q. Very wide powers of audit?

A. Yes, and even, long after qualification has lapsed, the Commission may examine into the affairs of a company.

Q. What Section is that?

A. I think it is Section 36.

MR. GRUMMETT: I wonder, Mr. Chairman, if, before we get into the question of audits by the Commission, if we might not have clarification of the

personnel of the Commission, and how it is appointed.

THE CHAIRMAN: Yes, I think so.

BY MR. GRUMMETT:

Q. Mr. Lennox, you gave us the names of the other two members. Is there any rule that a person holding a certain position must be a member of the Commission? For instance, this is the question; is there not a regulation providing that the Deputy Minister of Mines must be a member of the Commission?

A. No, not to my knowledge.

BY THE CHAIRMAN:

Q. Not even in the regulations?

A. No.

MR. GRUMMETT: I have been informed that the Deputy Minister is a member, and cannot resign, as long as he remains Deputy Minister.

MR. DOWNER: That seems to be covered in Section 2.

THE CHAIRMAN: Oh yes, quite; but it is not in the Act. There is nothing in the Act that limits it to the Deputy Minister.

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Lennox

BY THE CHAIRMAN:

Q. You are sure there is no regulation about it?

A. No.

Q. Was it in one of the former Acts?

A. No.

Q. It was the practice which was set up and followed?

A. I understand they wanted some person from the Supreme Court and they wanted a practical man, and they chose the Deputy Minister of Mines as the practical man.

Q. Since most of your issues are mining issues, the Deputy Minister of Mines, for that reason, was selected? Would that be correct?

A. Most of our difficulty is in connection with mining issues, rather than industrial issues. The only thing is, if an industrial issue is bad, it is very bad. That is the way I size it up.

BY MR. GRUMMETT:

Q. Then you are certain there is no regulation which provides that the Deputy Minister of Mines must be a member of the Commission?

A. I am positive there is no such regulation, Mr. Grummett, because the 1940 Act followed a review or

1934

Lennox

investigation known as the "Urquhart Investigation", and I have read that very carefully, and the recommendation contained in that report I think stresses the importance of having a practical man -- a practical mining man, but they did not identify him with any particular work.

BY THE CHAIRMAN:

Q. I notice in the regulations under Section 71 -- I do not think there is any special provision there which would enable the Lieutenant Governor-in-council to pass a regulation limiting the membership of the Committee to any class of people at all.

You do not know of any?

A. No.

Q. If you do not know of any, it is probably not there?

A. No.

MR. JOLLIFFE: In that connection may I ask Mr. Lennox, so we will know in what sphere we are finding ourselves.

THE CHAIRMAN: Yes.

BY MR. JOLLIFFE:

Q. You are interested in the Securities Act

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Lennox

and the regulations under the Securities Act?

A. Yes.

Q. Are there any other regulations apart from Regulation 356, which appears in this consolidation, which relates largely to forms and fees? Are there any other regulations in effect, under the Securities Act?

A. No, Mr. Jolliffe.

Q. This is the complete thing?

A. Yes.

THE CHAIRMAN: There is nothing there about the membership in the Commission.

BY MR. JOLLIFFE:

Q. Then you are also interested in the Broker Dealers Act of 1947?

A. Yes.

Q. And I suppose, from time to time, in a general way, in the Criminal Code of Canada?

A. Yes.

Q. And the Companies Act?

A. Yes.

Q. Is that about the field in which you operate? What I am getting at is this; is there any other legislation which we should look at which has a

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Lennox

bearing on your field of work?

A. No, I think you have covered it.

BY THE CHAIRMAN:

Q. What about the Investment Dealers?
You have jurisdiction if you care to exercise it?

A. Yes.

Q. Is that not under a separate statute --
the Investment Dealers?

A. No, they are not covered by statute. They are
covered by By-laws, and their own rules and regulations.
But we have so very little difficulty with the
investment dealers --

Q. But your jurisdiction covers all persons
or corporations which are dealing in securities?

A. Yes. The way I look at it, with the investment
dealers and the stock exchange itself, it is
essentially an over-riding jurisdiction. If they are
handling their affairs properly, they have the machinery
to do so.

Q. Perhaps you can go into that in a little
more detail. You have mentioned three organizations
or groups which apparently have something to do with
the securities business. The first that you mentioned
was the Investment Dealers Association?

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Lennox

A. Yes.

Q. What sort of business do
the investment dealers
engage in?

A. Municipal and Government Bonds, bonds and
debentures mostly, and probably much "blue-chip"
financing.

Q. Those would be gilt-edge investments
for the most part, generally secured by mortgage or
some assets of the company in some way, rather than
being a share interest in the company?

A. Yes.

Q. Is that more or less a rough and ready
definition?

A. Yes.

MR. GRUMMETT: Also, in the case of
municipal debentures, they would be apparently looked
into by the municipal board?

THE CHAIRMAN: Yes.

MR. HOUCK: The investment dealers are set
out in the interpretation of the Act.

MR. GRUMMETT: What Section is it?

MR. HOUCK: At page 564.

MR. JOLLIFFE: The interpretation section.

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THE CHAIRMAN: This reads:

"'investment dealer' means any person or company who is a member, branch office member or associate member of the Central District of the Investment Dealers' Association of Canada and such other person or company recognized by the Commission as an investment dealer who engages either for the whole or part of his or its time in the business of trading in securities in the capacity of an agent or principal".

That is a fairly broad definition, but what Mr. Lennox has told us adds a little something to that, but for the most part, investment dealers are considered as people who deal in the bond type of securities.

THE WITNESS: Yes.

MR. JOLIFFE: Institutional services?

A. Yes.

BY THE CHAIRMAN:

Q. Government bonds and corporate bonds?

A. And large industrial issues.

Q. And the other important thing which is indicated in this definition, the investment dealer may

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be very often in the transaction, the agent?

A. Yes.

Q. In other words, an investment dealer may sell to their customers bonds which they own themselves?

A. Yes.

Q. They can acquire possession and ownership in a block of bond securities?

A. Yes.

Q. And they can sell them, and the profits which they make -- the spread they make between the purchase price and the selling price, is their remuneration?

A. Correct.

Q. That is what they make out of it?

A. Yes.

Q. On the other hand, they also, in some cases -- perhaps to quite a large extent -- will act as agent?

A. Yes.

Q. If a customer wishes to sell some bonds he owns, he can go to an investment dealer and the investment dealer will sell those bonds?

A. Yes.

Q. There are these two different types of business which we should keep in mind.

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A. Yes.

BY MR. JOLLIFFE: Before we leave that, I have a request to make. You mentioned a moment ago that the investment dealers association has its own by-laws and regulations?

A. Yes.

MR. JOLLIFFE: I think it would be helpful to the Committee if you could get a copy of that and make it available to the Committee, perhaps to-morrow.

THE CHAIRMAN: Yes, I think we should have that.

BY THE CHAIRMAN:

Q. Now, Mr. Lennox, in your experience in dealing with securities and trading in securities, does the Investment Dealers Association regulate its own business in a reasonably satisfactory way?

A. Yes.

Q. Have you ever received any complaints in connection with transactions which are carried out through members of that Association?

A. I cannot recall a single complaint.

Q. Now, what happens to the new bond issues which come out with reference to the Securities Commission? Do they have to be presented to the Securities Commission

before they can be sold?

A. Yes, they have to be qualified with the Commission.

Q. Every new bond issue --

A. To the extent that it comes under the provisions of the Act, like municipal bonds and government-guaranteed securities.

Q. Government-guaranteed securities would include bonds of the Federal government of Canada, bonds of the Provincial government, but what about other provincial governments; are they all exempted?

A. Yes.

Q. All government securities of that kind are exempted; and municipal bonds are exempted; in other words, they do not have to be passed upon or approved before sale to the public.

MR. JOLLIFFE: What about the Hydro bonds?

THE CHAIRMAN: They are guaranteed by the province.

MR. JOLLIFFE: They are exempted, too?

THE CHAIRMAN: Yes. And all municipal bonds are passed upon by the Municipal Board before they can be validated.

MR. GRUMMETT: Yes, and the same is also true

in regard to those guaranteed by the Provincial government, or it was up to some time ago.

THE CHAIRMAN: It is pretty well extinct now.

THE WITNESS: The Canadian National Railway can sell a bond issue without any action by the Commission whereas the C.P.R. can not.

THE CHAIRMAN: A new issue can only be offered after approval by the Commission?

A. That is, of the C.P.R.

BY MR. JANES:

Q. Are the Canadian National bonds sold under the provisions of the Dominion Act?

A. No, they are guaranteed by the Federal government, and are exempt. The exemptions contained in Sections 18 and 19 are wide and are designed to facilitate normal, every-day transactions by banks.

BY MR. JOSEPH:

Q. Oh then, there are other exemptions?

A. Oh yes.

THE CHAIRMAN: Yes. Section 18 sets them forth as follows:

" Registration as an investment counsel shall

not be required to be obtained by,

(a) a bank to which The Bank Act (Canada) applies, or the Industrial Development Bank incorporated under The Industrial Development Bank Act (Canada), or a loan corporation or trust company registered under The Loan and Trust Corporations Act, or an insurance company licensed under The Insurance Act, or any officer or employee, in the performance of his duties as such, of His Majesty in right of Canada or of any province, or of any municipal corporation or public board or commission in Canada;

(b) A lawyer, accountant, engineer or teacher whose performance of such services is solely incidental to the practice of his profession.

(c) a person or company registered for trading under this Act, or any partner, officer or employee thereof, whose performance of such services is solely incidental to the conduct of the business as such, and who receives no special compensation therefor other than compensation paid or given by a mining,

industrial or investment company in respect of any services performed for such company;

- (d) a publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives advice as an investment counsel only through such publication and has no interest either directly or indirectly in any of the securities upon which the advice is given and receives no commissions or other consideration for giving the advice and who gives the advice as solely incidental to the conduct of his business as a publisher; or
- (e) such other persons or companies not within the intent of this section as may be designated by the regulations.

MR. JOLLIFFE: And trustees' securities are exempt, as I understand Section 19.

THE CHAIRMAN: Trustees' securities would

include those securities which you have mentioned and also a number of other securities such as mortgages, which, are personal rather than a corporate covenant.

BY THE CHAIRMAN:

Q. Trustees' securities do not include common stocks?

A. No.

Q. Do they include preferred stocks? I do not think so.

MR. JOLLIFFE: I thought they included railroad bonds. I think they used to.

THE WITNESS: Maybe it is changed now, Mr. Chairman. A lot of these railway securities now --

Q. Are not securities?

A. No.

BY THE CHAIRMAN:

Q. Then the Investment Dealers' Association of Canada regulate the business to the extent -- and correct me if I am wrong -- that they decide on the sort of commission which is fair and reasonable in the business? Do they?

A. They do. Of course, the Commission has a set policy, too, in that matter.

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Q. What is your policy with respect to the securities dealt with by the members of the Investment Dealers' Association?

A. Well, in the case of an industrial company, their selling commission or discount cannot exceed fifteen percent.

Q. You are now talking about bonds?

A. No.

Q. Does the Investment Dealers' Association deal in industrial issues?

A. Yes.

Q. It also deals in industrial common stock issues on some occasions?

A. Oh, yes.

BY MR. JOLLIFFE:

Q. Large issues?

A. Yes.

BY THE CHAIRMAN:

Q. So that you have your policy as to what commission or spread -- whatever it may be -- which may be allowed in that sort of an issue?

A. Yes.

Q. Fifteen percent. on the industrials?

A. Yes.

Q. What about bonds and debentures and issues of that kind, of a gilt-edge nature? Have you any policy with respect to that?

A. There is no definite policy, because most of these bond issues are underwritten or purchased outright by a syndicate of several investment dealer houses, and the margin of profit is so small on a large scale, that the Commission has never been called upon to take any part in that.

When I say "our policy is about fifteen percent."; it is not really the policy of the Commission, as I understand it to dictate to the industry that it should be restricted, but the industry has laid that down as their policy, and the Commission has co-operated with them in enforcing it.

BY THE CHAIRMAN:

Q. The Commission has taken the position over the years that a settlement of the fifteen percent. remuneration to the investment dealers for industrial sales or issues or industrial stocks is adequate?

A. Yes.

Q. These would be new issues of industrial stocks?

A. Yes.

Q. You thought that policy was reasonable and fair, and it has been supported by the Commission?

A. Yes, and that is the maximum -- the ceiling.

Q. Then as to their dealing in bonds, debentures, and gilt-edged securities of that kind; the Commission has never been called upon to take much part in controlling that, because the business appeared to be carried on in a satisfactory manner?

A. Yes. That is competition. That is, the issuing companies -- manufacturers call for tenders, and it is highly competitive, and it has never been practical --

Q. There has never been any necessity to intervene?

A. No.

Q. Although the Commission would have power to intervene if they found any condition developing which they felt was unfavourable to the public?

A. I believe it could be brought under the term of "unconscionable consideration for primary purposes".

Q. If anything was drawn to your attention, you would have power to deal with it in the same way?

A. Yes.

Q. That is the extent, perhaps, of your policy, as it affects the Investment Dealers'activities? Is that correct? Or is there anything else you wish to

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add to that.

BY MR. JANES:

Q. You would not have to pass on all bond issues approved by the Municipal Board?

MR. GRUMMETT: It might so be that after it has been approved, during the sale of these debentures or bonds, something might happen which should be referred to the Commission.

THE CHAIRMAN: Yes, they might be sold by an unlicensed dealer, or by some misrepresentation, and all those matters would naturally come before the Commission?

THE WITNESS: Yes.

BY THE CHAIRMAN:

Q. What I really had in mind at the moment was as to the general operation of the business carried on by members of the Investment Dealers' Association and the amounts of commissions they charge; The amount of profits they allow themselves, and the general policies adopted with respect to the sale and distribution of these gilt-edged securities. Your Commission has pretty well, as I see it, allowed them to regulate their own business, because it has been done over a

long period of years in a very satisfactory way.

A. It has been done since away back in 1916.

Q. Then the other organization which has to do with dealings in securities is, of course, the Toronto Stock Exchange?

A. Yes.

Q. Now, perhaps, you could let me know what your relationship is to the Toronto Stock Exchange? Where is that mentioned?

A. It is mentioned that when securities are listed and posted for trading --

Q. Where is that?

A. Section 41; it says:

"which are listed and posted for trading on any recognized stock exchange, where such securities are sold through such stock exchange; "which are traded or sold to the public except in the primary distribution thereof to the public.

"from one person or company registered for trading securities under this Act, to another person or company registered for trading in securities under this Act, where the purchasing person or company is acting as principal; or

"which are exempted by the regulations".

They are exempted from filing with the Commission.

Q. "A recognized stock exchange"?

A. No, with the Ontario Securities Commission.

Q. And what stock exchanges do you recognize?

A. We recognize the Montreal Exchange, the Toronto Stock Exchange, and I found that the Vancouver Exchange was recognized as a matter of policy when I took over.

There seemed to be some doubt about the Calgary Exchange. I recognized the Calgary Exchange.

There has always been an element of doubt about the Montreal Curb of Market. Strictly speaking, it is not an exchange. I think that is rather a delicate question from a practical point of view, although it has not been a seriously practical question so far.

BY MR. JOLLIFFE:

Q. Well, is it recognized or not?

A. There was no decision when I came, as to whether it was recognized or not. So far, we have not been called upon to recognize whether the Montreal Curb should be recognized or not. There is power to

recognize it, under Section 42, which says:

"(1) Where doubt exists whether any trade proposed or intended to be made in a security would be in the primary distribution to the public of the security, the Commission may, upon the application of any of the parties thereto, determine whether the proposed or intended trade would be in the course of the primary distribution to the public of the security and rule accordingly, and such ruling shall be final and there shall be no appeal therefrom."

Q. Well, if the capital stock of a company is sold over the Montreal Curb -- as it certainly is -- it would be primary distribution, if the Montreal Curb is not a recognized exchange within the meaning of Section 41.

A. But so far there has never been a request made to the Commission to make a ruling.

MR. JOLLIFFE: In the absence of acknowledgement or consent, surely it is not a recognized exchange.

MR. JANES: It does not come into the picture for selling securities in Ontario.

BY THE CHAIRMAN:

Q. Do you recognize any American exchange?

A. Yes, we recognize the New York Exchange, and the different regional exchanges.

Q. In other words, stocks which are originally issued through one of these recognized stock exchanges, do not have to be approved by the Commission, before they can be sold over the exchange.

A. No. But there is another feature to that. All the stocks sold over these exchanges are secondary distribution.

Q. They are all secondary distribution?

A. Yes.

Q. But there are cases of primary distribution through the exchanges?

A. There is, in the Toronto Exchange.

Q. You were speaking about the American exchanges?

A. Yes.

Q. The New York Exchange, for instance?

A. Yes. In other words, it is just a market. It is called "an exchange", but it is a market where somebody who has something to sell meets somebody who wants to buy.

In the Toronto Exchange, the distribution

of capital stock of an issuing company is made right over the exchange.

Q. Primary distribution?

A. Yes.

Q. New issues?

A. Yes.

BY MR. JANES:

Q. They are all old issues in New York?

A. Yes.

BY THE CHAIRMAN:

Q. In New York, it is entirely trading as between owners of securities?

A. Yes.

Q. Consider the United States Steel Corporation; they are not issuing any new stock. All the trades in the New York Stock Exchange are in stock issued sometime ago and traded from one person to another, to raise finances for the Company.

BY MR. JOLLIFFE:

Q. Is that a matter of practice or law if shares of an American company were listed on the New York Exchange, and there were still shares unissued; is there any authority to deal with them, or does the law there prevent that?

A. Mr. Jolliffe, this is heresay, but I have gathered as much information over a period of three years as I possibly could, and, as I understand it, there is no such a thing as primary distribution over the New York Stock Exchange. There may be over the New York Curb, but not over the New York Stock Exchange.

BY MR. JANES:

Q. How are they issued to the public then?

A. They are sold to the investment bankers, as they call them there, and dealers.

BY THE CHAIRMAN:

Q. They do not become listed on the Exchange, I suppose, until they have distributed a certain number of shares to the public, and the company has satisfied the Exchange of its sound condition, and one thing and another?

A. That is right.

Q. But if a Company which is already listed on the Exchange wishes to sell a new issue of treasury shares to raise further money for the company -- even in that case, your impression is that would not be sold directly on the Exchange; that it would be sold first through some investment banker or dealer?

A. Yes. They would first qualify with the S.E.C.,

and then qualified by the New York State Commission and when there was a complete public distribution, their listing would be stepped up that number of shares.

Q. They would have to be distributed before the shares could be listed?

A. That is my understanding, yes.

There is another practical angle to that. You often hear Americans discussing the fluctuation of price volume on the Toronto or Montreal Exchange. That is largely attributed to the fact that treasury shares are sold directly on the Exchange, and there is a big volume there, to make such a market movement possible.

BY MR. HOUCK:

Q. The investment Counsellors have an association, the same as the Dealers?

A. No, they are "lone wolves". There are two types of investment Counsel, and they differ very much.

Type number one here includes a written tipster sheet; type number two performs a very useful public service. It is too bad the numbers were not the other way around.

BY THE CHAIRMAN:

Q. Then is the Toronto Stock Exchange the

only stock exchange in Ontario which is now in existence and recognized by the Commission?

A. It is the only exchange in Ontario.

Q. At one time there was the Mining Exchange.

A. Yes, it used to be the Standard Exchange.

Q. That has been amalgamated with the Toronto Stock Exchange, and that is the only exchange in the province?

A. Yes.

BY MR. JANES:

Q. When they want to issue mining stocks, they must come to you for approval?

A. Yes. For all practical purposes, that is about the only way to get the preliminary steps to having the stock listed because the stock has to have a certain public distribution before it is listed.

BY THE CHAIRMAN:

Q. In other words, any new issue of common stock of a company -- and I suppose the same applies to preferred stock, does it not?

A. Yes.

Q. -- must be approved by the Securities Commission before it is distributed to the public either through the Stock Exchange or through any other means of

distribution.

A. Yes. There were a few exceptions to that.

Kemont was a notable exception, because they were not qualified with the Commission, but they had public distribution in this way. The mining corporation issued Kemont shares as stock dividends some twenty or thirty years ago, so Kemont had the necessary distribution for listing purposes, and was listed direct.

There are a few cases like that.

Q. That would be somewhat different from the ordinary case?

A. Yes.

BY MR. JANES:

Q. What does your approval mean?

THE CHAIRMAN: Yes, I think perhaps we should deal with that.

MR. JANES: Maybe I am a little ahead of time.

THE CHAIRMAN: I thought we might get a picture of the different types of securities, and how the sale of them is carried out, and what sort of regulating bodies there are for different classes of transactions.

MR. JANES: All right; I will withdraw the question.

THE CHAIRMAN: We have seen what has happened with the Investment Dealers and what sort of business they do. We are now in the recognized stock exchanges, and the sort of business they do, and, as I understand it, from what Mr. Lennox has said, any new primary distribution issue is sold for the first time through the Stock Exchange, and that issue has to be approved by the Securities Commission before it is put up for sale.

THE WITNESS: That is practically the situation, yes.

BY THE CHAIRMAN:

Q. But the stock exchange carries on its regular business of trading its shares across the Board and is a self-regulating body, to all intents and purposes.

A. Yes.

Q. I suppose there again, the Securities Commission has jurisdiction, if they want to use it, at any time, to step in and interfere but, on the whole, the Stock Exchange generally regulates its own affairs.

A. Yes, but we have to step in quite frequently.

Q. You do have to step in occasionally--
frequently?

A. Yes.

BY MR. JANES:

Q. Why would you step in?

BY THE CHAIRMAN:

Q. Give us a few examples.

A. Suspected market manipulation, and members of the Stock Exchange are also guilty of offenses, but not to the extent that the primary houses are.

Q. That is, some members?

A. Yes. The odd one here and there.

Q. Just because he is a member of the Stock Exchange does not mean that some time you may not have reason to complain about his activity? Is that right?

A. Absolutely not. We just completed a very extensive investigation in the matter of the Calanan, and we have a very extensive report. I do not wish to discuss it with the different members of the staff engaged in that investigation, but if we decide we want to publish the report, we must get the permission from the Hon. Attorney General (Mr. Porter) before we publish it.

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BY MR. JOLLIFFE:

Q. It is not available yet?

A. No it is not, Mr. Jolliffe.

BY THE CHAIRMAN:

Q. At any rate, that sort of investigation takes place from time to time, as the situations arise.

A. It is very involved. It covers a lot of ground, and takes a lot of time.

BY MR. JANES:

Q. Your investigation covered all the conditions? Was that the idea?

A. We were looking for what the brokers call "wash sales". That is, John Smith might say, "I am going to offer 10,000 shares on the Exchange if John Brown puts in an order to buy at the same price, to give a false impression of the activity".

THE CHAIRMAN: That, is, of course, an offense against the Criminal Code.

THE WITNESS: Yes. That is in a particular Section.

BY THE CHAIRMAN:

Q. If you can prove it.

A. Yes. The biggest difficulty is to prove it.

Now, that I have mentioned the Calanan; there is every indication that it is in market manipulation.

Q. I suppose in some cases you find cases of market manipulation but you cannot prove them, although you may think they may be.

A. Yes.

Q. Have you any case where you were able to establish that it was market manipulation?

A. No. About a year ago, we investigated the market manipulation. We were looking more to prove secret profits on behalf of the people involved in this market manipulation, but we stepped in so quickly that we got in there before they got their secret profits. That is one case where we did a directly preventive act.

There was an extensive investigation some years ago in Eldona, and that resulted in an amendment to the Criminal Code. The opinion was that the Criminal Code was not adequate to deal with the situation that was disclosed there, but there were no prosecutions followed.

Q. Then it appears you have general authority over members of the Stock Exchange, just as you have over other people dealing in securities?

A. Absolutely.

Q. The Stock Exchange brokers - the members of the Stock Exchange -- can do two kinds of business, can they not? They may sell for a commission, or they may act as principals, just as an investment dealer can?

A. No. If he is simply a member of the Stock Exchange, he can only deal as a broker's agent. If he wants to deal as a principal, that is, engage in primary distribution, he must take out registration also as a broker-dealer.

Q. I am not talking about registration yet. We will come to that. But, as a member of the Stock Exchange -- to get some conception of the business of the Stock Exchange -- we have to visualize that it is simply a method whereby people who own shares of a company can go and sell them at the current market level. The person who sells may never know who buys his stock. As a matter of fact, I suppose he never does know who buys the stock, that is, who the ultimate buyer may be. He goes to a broker with a seat on the Exchange and he carries through the transaction, and he charges a commission, the amount of which is fixed by a regulation of the Stock Exchange itself. Is that right?

A. He is still only an agent.

Q. I know, but I am talking about the type

the transaction when he goes to an agent. A commission broker is an agent?

A. Yes.

Q. And, of course, there is a good deal of law on the obligations and responsibilities of a broker to his customer?

A. Yes.

Q. Generally it is considered that the broker is acting as an agent, unless with the consent and approval of the customer, he is acting as a principal with respect to his customer? Is that right?

A. Undoubtedly there was a great deal of that. The broker actually being a principal. I think nowadays most of them have a sister company.

Q. To-day, of course, there are cases where a Stock Exchange broker can sell to his client as a principal?

A. He is not supposed to, under that definition, sir.

Q. Where is that?

A. 18, 1(a).

BY MR. JOLLIFFE:

Q. As you understand the Act, whatever affiliate he may have, outside the Exchange, when he trades on the Exchange for a principal or customer, he must act as an Agent?

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A. Yes.

MR. JANES: He cannot buy the stock and sell it?

MR. JOLLIFFE: No. He acts as a broker in the old-fashioned sense of the word, and his responsibility is set out in Section 50 of the Act. He has to tell his customer, from whom or to whom the security was bought or sold, so he is certainly an agent, in the strict sense, when he acts on the Stock Exchange.

THE CHAIRMAN: What Section is that?

MR. JOLLIFFE: Section 50 (c).

THE CHAIRMAN: He does not know the name of the customer.

THE WITNESS: The other company does know, but he --

THE CHAIRMAN: He must say it was bought from a certain brokerage house.

THE WITNESS: Yes.

THE CHAIRMAN: But one customer does not know who the other customer is, in most cases, unless he privately finds that out. Generally, the only parties to a transaction on the Stock Exchange are the

two brokers.

MR. JOLLIFFE: The two members.

THE CHAIRMAN: Yes, the two members.

MR. JANES: A great many of the stocks are registered, and he would know who he was dealing with.

THE WITNESS: Yes, but on the Exchange you would not know the identify of the person who was selling. You would know the House from which your broker bought it.

BY THE CHAIRMAN:

Q. But the customer is entitled, when the stock is bought across the Exchange on his behalf, to the benefit of the broker's complete impartiality in the transaction, and his service to the customer as an agent?

A. Absolutely.

Q. The broker is the servant of the customer for that transaction?

A. Yes.

Q. And should have no personal interest in that transaction?

A. That is correct.

Q. He is acting as a broker?

A. Yes.

Q. But, on the other hand, a broker who is a member of the Stock Exchange may, under certain circumstances, if he has a proper registration, even though he is a member of the Stock Exchange, from carrying on that agency business? There is nothing to prevent him, if properly registered, to do so, from selling as a principal to a customer?

A. Oh yes. There are several members of the Stock Exchange who are also registered as broker-dealers, so they may act as principals.

Q. So, in the first place, knowledge must be brought home to his customer that he is buying from his own broker?

A. Oh yes. If a dealer sells and does not disclose the fact that he is selling as a principal, he imperils his registration, and his contract is voided.

Q. It all depends on whether the customer is satisfied to enter into the transaction?

A. Yes.

Q. And has full knowledge of it?

A. Yes.

Q. And in order to carry on that transaction, the broker would have to be registered for that purpose?

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A. Yes.

THE CHAIRMAN: I think we should deal with registrations generally a little later on.

BY THE CHAIRMAN:

Q. So, very briefly, that pretty well indicates the relationship of the Toronto Stock Exchange and the Securities Commission, unless there is anything else you have to add.

A. No. We have the same jurisdiction over the Stock Exchange, as any other. Only it works out, in a great many cases, just as an over-riding jurisdiction.

Q. For the most part, the Toronto Stock Exchange succeeds in regulating its own affairs?

A. Yes. The Toronto Stock Exchange is very anxious to prevent trouble. They will come to the Commission frequently.

For instance, sometimes something may develop down on the Exchange, where they investigate it fully and it gets beyond their jurisdiction, and they would be the first to come to the Commission and ask for help.

BY MR. JANES:

Q. Help in what way?

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A. The usual way, within the powers under the Securities Act.

Q. Then I will repeat my question. "They made an investigation and approved"; what does that mean?

A. We can investigate. We can get an order from the Hon. Attorney General appointing different members of our staff as investigators and we have full power to subpoena witnesses, and cross-examine and examine them.

BY THE CHAIRMAN:

Q. And have a complete audit?

A. Yes, and have a complete audit; we can seize their books and go into anything fully. We can go into the Exchange House. A lot of people who buy street certificates, and their names are not on the certificates, but we find out what their names are, if we want to. We have as wide a power of investigation as it is possible to give.

Q. You investigate to see if there is such a gold mine, but you do not investigate the worth of a stock?

A. Oh no, definitely not.

BY MR. JOLLIFFE:

Q. What you are looking for is some violation

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of the law?

A. Yes.

BY THE CHAIRMAN:

Q. As far as a member of the Stock Exchange is concerned, he is dealing with stock in some company, which no doubt has been approved some time ago, or if it is a new distribution, it has been approved but what you will investigate is some subsequent transaction to find out whether the dealings in the stock and the dealings with the public in that stock --

A. Trading in that stock.

Q. -- yes, trading in that security, has been properly carried on, or whether any offense was committed? Then that has nothing to do with the value of the stock in most cases?

A. Yes.

Q. I suppose if there was some suspicion that something had been done with any of the assets of the company, your auditor and investigator could be directed to find that out, as well as anything else?

A. Section 36 gives us the wide powers of audit.

BY MR. HOUCK:

Q. Mr. Lennox, during your tenure of office, have you been called upon at any time to take action in those cases?

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A. You mean --

Q. Where you found some fraud on the Exchange, or some misdealings with the stock.

A. Most of our transactions are against unregistered and unlicensed people. And, apart from that, most of our investigations and disciplinary actions against promotional houses, non-member houses, who are selling shares direct to the public by way of mail or telephone solicitation.

BY THE CHAIRMAN:

Q. We will come to that next, when we come to the broker-dealers. We have now dealt with the investment dealers, and the members of the Toronto Stock Exchange, and then there is a third classification, that is, the broker-dealers.

The broker-dealers have an association known as the "Broker-Dealers' Association"?

A. Yes, which was formed in 1948.

Q. And there is a statute called the "Broker-Dealers' Act"?

A. Yes.

THE CHAIRMAN: Perhaps we should start in with that part of it to-morrow.

MR. JOLLIFFE: Just before we move on to

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the broker-dealers; there was further material which I think Mr. Lennox and his assistant could provide. In this case, I would like copies of it myself.

BY MR. JOLLIFFE:

Q. Mr. Lennox, is there a printed annual report of the Commission?

A. Yes. I brought a number of them down.

Q. I would like to have that. I do not think it has been sent to the members of the Legislature.

A. No, it has not. It is a monthly bulletin.

Q. Do you not have an annual report?

A. No.

Q. In some cases, it is required. You publish a monthly bulletin?

A. Yes, since January, 1948.

Q. I have seen one, but I wonder if you could provide me with a set?

A. Yes. (Documents handed to Mr. Jolliffe).

Q. I see you have only one set. I presume you intended it for the use of the Committee?

A. Yes.

BY THE CHAIRMAN:

Q. Have you other sets?

A. I can get a complete set; in fact, I can get several.

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THE CHAIRMAN: I suppose the Committee would like to see them as an example of what it is, and then see what sort of thing it is, and then if they want to follow it through, they can be supplied, I suppose.

THE WITNESS: Yes.

MR. JOLLIFFE; I would like to have a complete set, and I think the Committee itself should have a complete set.

THE WITNESS: The point is, Mr. Chairman, that these bulletins report written decisions by the Commission and the Chairman and the policies laid down.

MR. JOLLIFFE: Thereby indicating, by way of formal record, one part of the work -- not all the work, but a very important branch of the work -- the Commission has been doing since 1948?

It may never have come up before, but it does occur to me that it should go to all members of the Legislature. It is an official publication of the Commission, indicating the efforts of the Commission to make improvements in the administration of the Act, and I think all members of the House should have it.

But at the moment, in order to facilitate

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our work, I think it should be available to some of us, and we should have access to it.

THE WITNESS: I had to borrow some to make up a complete set. The unfortunate part is that while we published sufficient to meet the normal needs, some particular issue has news value rather than academic and there was a great demand for it, and it exhausted our supply.

THE CHAIRMAN: Do what you can to get a complete set.

THE WITNESS: I will, sir.

MR. JOLLIFFE: In the meantime, may I have this one (indicating)?

A. Yes.

MR. HOUCK: Before we adjourn, Mr. Chairman, I have a list of some twenty-five or thirty questions which I sent to the Chairman. May I have time to-morrow to ask him these questions?

THE CHAIRMAN: Surely. He mentioned to me that he had received them.

THE WITNESS: These questions will lead on to other questions.

1975

Lennox

THE CHAIRMAN: I think if we lay the foundation first to get the broad picture, then some of these questions might come into the broad picture, and some might deal with some special phases of it.

Is there anything further this afternoon?

MR. DONNER: I think it would be better if we go right on with the continuity.

THE CHAIRMAN: Then to-morrow, we will get a general description of the broker-dealers' functions.

We will adjourn now until 10.30 to-morrow morning.

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---The witness temporarily retired.

---Whereupon at 5.00 o'clock P.M., the further proceedings of this Committee adjourned until Wednesday, July 25th, 1951, at 10.30 of the clock,
A. M.

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ONTARIO

PROCEEDINGS
of the
SELECT COMMITTEE OF THE
ONTARIO LEGISLATIVE ASSEMBLY

APPOINTED TO ENQUIRE INTO AND REPORT
UPON CERTAIN MATTERS CONCERNING THE
ADMINISTRATION OF JUSTICE IN THE PROV-
INCE OF ONTARIO.

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Vol. 14.

Wednesday, July 25, 1951.

1976

F O U R T E E N T H D A Y

Toronto, Ontario,
Wednesday, July 25th, 1951,
At 10.30 o'clock a.m.

---The further proceedings of this Committee reconvened
pursuant to adjournment.

---All parties present.

---Same appearances as heretofore noted.

THE CHAIRMAN: Gentlemen, we will come to order.

OSWALD ELMER LENNOX,

A witness previously heard and now recalled who, having
been already sworn, continues his testimony as follows:

BY THE CHAIRMAN:

Q. Mr. Lennox, yesterday afternoon you were
outlining some of the types of securities dealers
organizations. You had dealt with the Investment
Dealers Organization, the Toronto Stock Exchange, and
I think we had come to the Brokers Dealers Associa-
tion.

Perhaps you can go ahead, in your own way, and describe what that is, and the function of it, and the sort of business they do.

A. Well, Mr. Chairman and gentlemen, the broker dealers -- which consist mostly of promotional houses dealing as principals in the distribution of prospective issues to the public -- were formed as an association in 1948.

As a matter of fact, they were organized just about the time I was appointed to my present position. The theory of that, of course, was self-discipline and self-management, and I think, if I may say so, it is an excellent principle, and I have every confidence it is going to work out in this case, as it has in the older organizations, such as the I.D.A., which was organized in 1916, and the Stock Exchange which goes back the best part of one hundred years.

At first it was only natural that these people had a lot of domestic troubles, and they gave the commission a great deal of trouble. I would say, for the first year -- or the first year and a half -- they possibly retarded securities administration. In short, they went to the commission, and wanted the commission to give everything, and they did not want to give anything.

1978

Lennox

Now, we have a new Board which I think is more representative of the promotional industry, and I think they are doing an excellent job, and I think eventually -- if you can call it an "experiment" -- it will work out to the over-all advantage of this province.

Later on, no doubt, I will refer to specific constructive measures adopted by the broker dealers.

The main issues between myself -- I should not say "myself", but the Ontario Securities Commission -- and the broker dealers is that of price spread -- that is, the price paid to the Treasury and the offering price of the securities to the public -- is still excessive, and it is a very serious position, because the wide spread in prices serves as an incentive which was promptly aired in the Press, because the spread in prices enabled these excessive telephoning and high pressure operations, and the exorbitant advertising, and excessive salesmen's commissions. That is my opinion.

The association now has about 140 members, holding a single registration, and about twenty-five other members who hold dual registrations inasmuch

1979

Lennox

as they are members of the Toronto Stock Exchange and have also taken out a registration as a broker dealer, in order to enable them to trade as principals in the primary distribution of securities to the public.

BY MR. HOUCK:

Q. Does the executive of these people meet with your commission from time to time?

A. Yes. I made a count one year, and we had thirteen meetings, which would naturally mean about one a month, but, for instance, at this time of the year I do not think you could round up a quorum of the Board of Governors of the Broker Dealers Association.

Besides meetings where the full board comes up to discuss matters with the commission, including the Registrar, the Chief Auditor, and the Senior Solicitor, the Chairman of that Board, or the Vice-Chairman or the Secretary are constantly in touch with the Commission.

Q. Do they seem to be co-operative with you?

A. I would say so. There is a definite trend of improvements -- a definite improvement.

MR. JAMES: Mr. Chairman, I was interested in Mr. Lennox mentioning the price spread. Is this

1980

Lennox

the proper time to ask him to enlarge on that a little bit, and the way it affects these fraudulent stock sales, and telephone calls, about which we have read so much?

THE CHAIRMAN: I think it might be a good time for the Commissioner to deal quite fully with the sort of things the commissioner raised yesterday, that is, what the commission does approve of, and the various things taken into consideration, the price spread being one of them.

BY MR. JANES:

Q. When you approve a certain stock, what does that mean? Does your approval mean that that stock is worthy of investment? Or, in other words, that there is a gold mine, or an oil well, or something of that kind? Does your approval mean that?

A. Definitely not. Our approval means they have filed a prospectus and other statutory material, which is a requirement of the Act.

The requirements in regard to mining issues -- and I will devote most of my evidence to mining issues, because that is the more difficult problem -- are shown in Section 38, where the requirement is

1981

Lennox

directed to a full, true and plain disclosure. We have to check and see that all these requirements of the Act are met with, and that the consideration given for the property -- for instance, if a prospector turns over a claim to an issuing company -- that the consideration given in return for that property is fair and equitable, that proper arrangements have been made to tie up 90% of the shares in a pool or escrow, as the case may be, that is, that they are unsaleable--

BY THE CHAIRMAN:

Q. That is, unsaleable for a period?

A. Yes, unsaleable to the public for a period, and that the financial statement meets the requirements of the Act.

Q. Will you enlarge a little on that? You say they are unsaleable to the public for a period. I think that is clear, but why do you hold 90%?

A. In order to give the financing of the treasury a fair chance, so that there will not be competition between financing the treasury and the vendor, who is often the promoter, as well as the company, being allowed to unload the vendors' interests.

1982

Lennox

BY MR. GRUMMETT:

Q. Mr. Lennox, I think the Committee would get a much better view of the whole matter if you started back when the prospector is in the bush.

MR. CHAIRMAN: Yes, I think that is a good idea.

MR. GRUMMETT: Mr. Janes is asking a question, and it may confuse the whole issue. If he started back where the prospector goes into the bush, and stakes a claim, and shows us exactly where he comes in and where he keeps up with the operations of the dealers, if he can, I think it would be much better.

THE CHAIRMAN: In other words, give the whole history of one of these typical transactions, what they do, how they go about financing it, and what steps you take, and what approval you have to give until it is listed on the Stock Exchange -- assuming this is one which has succeeded.

MR. GRUMMETT: Yes, we will leave the other 500,000 aside.

MR. VILLENLUGE: I think that is a good idea.

1983

Lennox

THE WITNESS: A prospector goes into the bush and stakes some claims. He does the necessary assessment work on those claims to keep them in good standing, and then he goes down to Bay Street and tries to finance the development of these properties.

What happens is that the promoter, or broker, or some group, with the prospector in the picture, incorporates a company. For the sake of argument, we will say it is a three million dollar company --

BY MR. GRUMETT:

Q. Let me interrupt you. Quite often there is a syndicate before the company?

A. Yes, certainly.

Q. Maybe you can enlarge on that angle of it, too?

A. Frequently the prospector forms a syndicate, and under that syndicate agreement, he is enabled to issue units and sell those units to the public.

If a syndicate has been formed prior to the incorporation of a company, each of these units has a share value. Taking the argument that each unit carries with it 25 shares, from then on in it is not much different than any other normal promotional financing.

1984

Lennox

I will take --

BY THE CHAIRMAN:

Q. What is the purpose -- perhaps I had better mention this -- what is the purpose of the money that is raised and put into a syndicate? What is it generally used for? There is some limitation to it?

A. Further development, with a grub stake. A prospector can form a syndicate and get a grub stake to go out and look for properties which, if successful, can eventually be turned into a company.

BY MR. JOLLIFFE:

Q. Prospectors syndicates are governed by the Securities Act?

A. Yes, but they are simple provisions, Mr. Jolliffe. It is to raise money to find his property.

BY MR. JANIS:

Q. He can form a syndicate before he has any property at all?

A. Yes. That is commonly called a "grub stake".

Then, when this three million dollar company is formed, the prospector's holdings are paid for by what

1985

Lennox

we call "vendor's shares". Up to 1950 the vendor's allowance was accepted as one-third --

BY MR. JOLLIFFE:

Q. That would be one million shares?

A. Yes. That was the invariable practice, subject to adjustment upwards if the prospector could establish out-of-pocket expenses, and work and labour which would justify an additional allowance.

In May, 1950, after discussions with the Stock Exchange and the Brokers Dealers Association, and the prospectors -- and when I say "discussions", they were lengthy and long discussions -- we were able to revise that policy by reducing the vendor's interest in the case of a three million share company to 750,000 shares, in other words, from one-third to three-quarters.

Q. That would be one-quarter.

A. Oh, yes, one-quarter, that is right. I am sorry, reducing it to one-quarter.

In the case of a four million share company, we reduced it to twenty percent, and in the case of a five million share company, we reduced the vendor's interest to 18%.

That is a matter involving millions of dollars. It has changed the procedure, after a period

1986

Lennox

of a great many years, and I am happy to say that I think the prospectors, although they objected to it strenuously at the time, are now absolutely satisfied, because they feel that their shares over all have a better value, and are not just kicked around, as worthless paper.

BY MR. HOUCK:

Q. Mr. Lennox, do the members of these syndicates receive some vendor's stock in order to allow their names to be connected with it?

A. The syndicate manager or trustee receives vendor's stock. He still receives one-third. We have not interfered with that, because in this day and age we are trying to encourage prospectors to go out.

Q. Perhaps you misunderstood my question. Supposing this prospector forms a company; he goes to some man prominently known, and asks if they will act as president or vice-president. Do they receive vendor's stock?

A. Not officially. No doubt there are private deals between the prospectors and the financial interests --

MR. GRUMMETT: Call him the "promoter".

THE CHAIRMAN: What Mr. Houck was asking

1987

Lennox

related to the directors and officials of the company.

Is there any allowance made for any shares to go to them?

THE WITNESS: It is not directly recognized. But the commission does not interfere in that private contract between a prospector and a promoter.

BY THE CHAIRMAN:

Q. In other words, a prospector out of his million shares could, if he wished to do so, give some of the officers or directors of the company some shares to compensate them for taking on these duties? Is that what happened here?

A. I can make that clear. The prospector is often called upon to, to use the language of the streets, "sweeten the deal", as they call it downtown.

BY MR. JOLLIFFE:

Q. But it still remains vendor's stock?

A. Yes.

MR. JOLLIFFE: I think we should let Mr. Lennox go on and explain the process.

THE WITNESS: As I said, it is not recognized.

1988

Lennox

The commission does not intervene with it, but it is disclosed in the prospectus informally, in this way; there is provision for disclosure in the prospectus of any person holding a greater/than five percent. of the capital stock, including the vendor's interest, and it shows who is in the deal with the prospector, and has been bonused by the prospector.

The prospectors or vendors are often called upon to bonus the broker-dealer making the public offering. It is a bonue to him, and he is able to acquire a certain block of vendor's stock at a very low price to -- again using the term I have already used -- "sweeten the deal".

When I came into office, very shortly after this 1947 Act was passed, I found that they were selling vendor's shares along with Treasury shares, without making any disclosure in the prospectus to that effect. You see now, gentlemen, that would render the whole transaction void, because the shares are not divisible; they have no identity; a person cannot say, "I bought on the representation that they were Treasury shares, and I found that the vendor's shares went along with the Treasury shares."

1989

Lennox

BY MR. JANES:

Q. By "Treasury shares", you mean anywhere the money goes right into the company?

A. Yes. So we insisted upon a full disclosure in case they intended to offer vendor's stock, along with Treasury stock.

So the deal is set up allowing the vendor's shares, but it is all contingent upon approval by the Commission. Even if they sell shares outright for cash, it is dependent upon final approval by the commission.

Then the promoter or issuing company -- the company which intends to issue and make a public offering -- prepares the prospectus and other statutory material.

I have brought some samples of prospectuses which I thought might be of some assistance to the Committee.

BY MR. JOLLIFFE:

Q. These are not all mining prospectuses (indicating)?

A. No, not all of them. That material is filed with the Commission in draft form. It is checked against their requirements and provisions of the Act.

1990

Lennox

The engineer's report is checked to see if it is complete, and that the certificate is in order, and sometimes, when we are in doubt, we refer the prospectus to Dr. Rickaby who is a member of the Commission, and Deputy Minister of Mines.

I should not say "prospectus"; I should say "engineer's reports".

According to the ordinary financing arrangements existing now --

Q. Mr. Lennox, may I make a suggestion to you?

A. Yes.

Q. I suggest in presenting this outline of what ordinarily occurs in the financing of a mining transaction, you should distinguish between what is required by the law, and what is a matter of practice. You see what I mean?

A. Yes. Well, what is required by law is fully set forth in Sections 38, 39 and 41, and I will try to emphasize our particular policy as I go along.

Under our normal financing system, these Treasury shares -- which, in the case of these 3,000,000-share company to which I have just referred, would then be $2\frac{1}{2}$ million shares, as $\frac{3}{2}$ of a million shares have already been allotted for the property.

They are usually underwritten and are optional at a scale of prices, which scales up as it goes along. I think I should enlarge on that, and mention something about underwriters and optionees.

BY MR. JANES:

Q. We find here "A", "B" and "C" stocks; is that a different grade?

A. No, it is a gradual price set up.

We would like, if possible, that all underwritings and options would be granted direct to the dealers entitled to sell the stock to the public. Unfortunately, there is an individual who appears, whom I shall describe as the "middle-man", and that is an apt description of him, who underwrites and options these shares.

The cause for the use of a middle-man, I understand, flows from a taxing proposition originally. The income tax people have caught up with that advantage, whatever it was, and there is no value now in having a middle-man from a taxation point of view, but the system has been introduced, and it is very prevalent, even to this day.

The underwriter or optionee might underwrite a block of stock or buy outright a block of stock,

1992

Lennox

and then obtain an option on successive blocks of stock, over a period of time.

Q. Do you mind if I interrupt you?

A. Not at all. I would be glad if you would.

Q. I wonder if that might not be made more clear, if we received a typical case as suggested in your bulletin, to explain the nature of this option agreement.

A. In the case of the Ascot Metals Corporation Limited, accepted for filing in the spring of 1949, by an agreement dated March 10th, 1949, E.A.R. -- I will only use the initials, not the names, if I can avoid it -- agreed to purchase 500,000 shares, being 300,000 shares at .15¢, and 200,000 shares at .20¢, and the sum of \$12,499.95 had already been received in payment for 83,333 shares at .15¢.

Otherwise, there is a formal underwriting or outright sales of that property or shares.

BY MR. JAMES:

Q. Excuse my ignorance again. Have those shares the same share value -- any dividends?

MR. GRUMMETT: Oh, certainly.

THE WITNESS: If it comes to dividends, all

1993

Lennox

shares are the same, even the vendors.

And a further \$37,500.05 for 241,667 shares is to be paid within ten days after acceptance of filing by this Commission.

The \$15,000. for 75,000 shares is to be paid within 100 days after the said acceptance date, and the balance of \$20,000. for 100,000 shares, within 160 days after said acceptance date.

You will see by that, gentlemen, that over \$12,000. has been received by the Treasury, which is evidence that the underwriter has some confidence in the undertaking, and he has created a liability covering \$37,500., \$15,000., and \$20,000. That is not an option that he can drop; that is a debt which he owes the company. It is a firm contract.

I would like to emphasize that, because the outside press has criticized our financing from every point of view. I did not select this (indicating); it was handed to me. This is just a sample at random. I have many other reports here which shows that Ontario financing is on a sound basis in a majority of cases, but there are, as usual, a few "fly-by-night" concerns giving us a lot of trouble.

But the Commission is concerned with another problem. Suppose we stressed the question

of a firm underwriting and insisted on the promotor creating a debt and liability; surely we will be met with a proposal right "off the bat". They would say "you are discriminating against the small man who has a small property; he has something which is worthwhile but he cannot meet your requirements". That is an opinion we have to continually guard against. If it were not for that, we could put our financing on as good terms as they have down in Wall Street, I believe.

Here the underwriter has created a liability he is bound to meet.

This goes on to say:

"In consideration of the foregoing, E. A. R. received an option on a further 499,995 shares, being 100,000 each at .25¢, .30¢, .35¢ and .40¢." That is the rising scale to which I referred earlier. The idea of that rising scale -- which is not understood in some other jurisdictions -- is that the opinion in Ontario has been for a great many years, that when an issuing company is well financed up to a point, and development has been done, resulting from that financing, the scale should be stepped up and the matter of financing increased.

1995

Lennox

Whether that is better than other forms of financing, is a matter of opinion. I can refer you to a prospectus accepted by the S. E. C. where 600,000 shares went out at .60¢. It is a matter of opinion whether that financing is better than ours, but this form seems to have been accepted over a period of years, and within our own jurisdiction, I have not heard any serious criticism.

The criticism I have heard is that the issuing company should not grant options, but should sell through a broker, if they wish, on a straight commission basis, with a result that if they do develop a very promising property, and promising results are discovered in the early stage of financing, the company itself will get the benefit, rather than the optionee.

That is possible in Ontario, because we have what we call "security issuers", which enables the officers and directors of a company to sell their securities direct to the public, but with this restriction, that at least 75 percent. of the proceeds of the sale must go into the company's treasury.

So, to carry on with this example I have been handed, we find further large blocks of shares have been optioned at various prices, from .25¢ up to

1996

Lennox

.50¢.

We further find that the authorized capital of the company is 3,500,000 shares and that 2,083,338 have been issued and 800,000 have been escrowed. That dates back to 1949, before the Commission reduced the amount of the vendor's stock.

BY MR. JOLLIFFE:

Q. I think you might explain the meaning of that term for the purpose of this financing, Mr. Lennox.

MR. GRUMETT: Yes, because it has very important bearing, the escrow stock on the whole transaction, so I think now would be the time to bring that in.

THE WITNESS: Yes. "Escrowing stock" means it is placed in a pool, usually with a trust company, under certain conditions. The normal conditions are that this stock may not be released without the consent of the Ontario Securities Commission.

I would say that if it is a listed stock, the consent of the Toronto Stock Exchange must also be obtained.

We have a very definite policy with reference to the release of these shares, with the idea of

1997

Lennox

protecting the treasury of the company while financing is still going on.

It was not so very long ago that the order of the day was that one share of the escrow stock would be released for every share sold. We have changed that policy to this; that unless there are special factors, the right of release would only be one share for every three shares sold, so that the company, in the ordinary course of events, with two and three quarter million shares to sell, would be fully financed before the release from escrow.

BY MR. GRUMMETT:

Q. I do not think you made it clear what stocks are placed in escrow. You have not been sufficiently clear on that point -- the reason for placing them in escrow.

A. I thought I had. The shares going to the vendor-- 90 percent. of those shares are escrowed to protect the treasury. In other words, the sale of treasury stock will not come into competition with the sale of vendor's stock.

BY MR. HOUCK:

Q. Who decides if there are any special conditions, where they can sell the escrow stock?

1998

Lennox

A. I am just coming to that. When an application is made for release from escrow, it is accompanied by a financial statement. A complete break-down of that financial statement is made, and the factors we consider in granting a release for escrow, are, first, the amount of money already raised from the treasury and secondly, how much of that money has been expended in the development of the property, so that in an ordinary mining company, the release from escrow has been materially restrained in the last few years; I might say that ^{goes} back to the time of my predecessor but I am happy to say that the Broker-Dealers are now urging very strongly that even further restrictions be placed on the release of escrow shares, because they say that a lot of these so-called "high-pressure individuals", we are battling from day to day, really cause difficulty by acquiring vendor's shares from prospectors and others at a ridiculously low price, and selling them at a mark-up which is extremely high. They say that is where these "high-pressure" people are making their profits and it enables them to continue with the "high-pressure" methods.

I think their representations indicate very strongly a change of attitude on the part of the Broker-

1999

Lennox

Dealers' Association.

But the Commission has a further consideration. We must consider our duty to the prospectors, and the prospectors have to live, and we must not retard the release of vendor's shares unduly to the prejudice of the prospectors, who, after all, are the men who go out in the bush and find the properties in the first place.

So we have another angle to consider, apart from the angle advanced by the Broker-Dealers Association.

BY MR. GRUMMETT:

Q. Would not the prospector be protected? If you allow shares to be dumped on the market, the prospector loses out. If it turns out to be a successful mine --

THE CHAIRMAN: The prospector has to have some breakfast today.

MR. GRUMMETT: A small amount could be released, enough to keep him going.

BY THE CHAIRMAN:

Q. That is done, is it not?
A. Yes.

Q. What is the percentage? Ten percent?
A. Yes. But additional releases of small amounts,

2000

Lennox

say a thousand shares here and a thousand shares there, is a very expensive proposition, because the trust company and transfer agent charge a considerable fee and there is the government tax on the shares throughout. So we have to keep an eye on the over-all cost as well.

But, in the spring, you will find the prospector wanting to get his shares out and get enough money to go out in the bush again.

I am certainly very pleased with the representation made by the Broker-Dealers and I think it will result in an adjustment along the lines suggested, but we probably will not go quite as far as the Broker-Dealers would like us to go.

BY MR. HOUCK:

Q. Then, it is within your jurisdiction, if they are given the right to release this vendor stock from escrow.

A. Yes. We have a say, and in the case of a listed stock, we have to canvass the opinion of the Toronto Stock Exchange.

BY THE CHAIRMAN:

Q. Is not the agreement generally one which runs for a specific length of time, and the shares are tied up for so many months or years, or is it

generally left to the discretion of the Commission?

A. Normally, it is left to the discretion of the Commission.

Q. All the way through, because it hinges on the statutory provisions in Section 44.

A. There are some cases where there are restrictions placed on releases to protect --

MR. JOLLIFFE: There are pool agreements over and above, and entirely apart from the statutory requirements?

A. Absolutely. I can recall a current case, a week or so ago where the Commission insisted upon all shares being in escrow for a period of years. We did not insist on it, arbitrarily, but we can, for the protection of that particular company. That was the out-come. A few questions might help me.

Q. Is this correct, Mr. Lennox; the escrow arrangement was entered into voluntarily, on the basis that if they are not made in a certain way, the issue would not be accepted by your Commission?

A. A statutory escrow agreement is a condition precedent to acceptance by the Commission.

Q. And the normal requirement is that ninety percent. of the vendor's shares, at least, shall be placed in escrow subject to your release, and only

with your consent?

A. Yes, but I think this would be a very opportune time to deal with the special considerations with reference to the escrow shares.

In the spring of 1948, as you all know, the Western oil fields began to develop very rapidly, and there were different kinds of western oil. There was the shallow well at Lloydminster, with a very heavy crude oil, as opposed to the high gravity oil coming from such fields as Redwater and other Alberta fields.

The western oil situation was new to the Commission, and it was new to the brokerage industry itself. They are not responsible for all the actions; some of them can be attributed to ignorance.

We found out in dealing with the chief shallow Lloydminster fields, which are in competition with the great commercial flow, that the whole scheme in the local primary houses was to get a successful well, and their odds for getting one were very good; they could hardly miss in certain districts. But their object was to get a successful well and unload their vendor's interest, and from then on, the deal was a "dead duck".

I will give the Broker-Dealers' Association a mark for this one, because it shows how an organized

2003

Lennox

industry, with the more or less academic knowledge of the Commission, can be of great help.

In November, 1949, after this situation had developed, the Broker-Dealers came to the Commission with the suggestion that in the case of an oil field, there be no free vendor's shares at the out-set. That curbed it considerably.

The next idea was that the release was governed and controlled by a certain fixed policy from then on and those policies are set forth in the November, 1949, bulletin.

At the same time -- and this (indicating) is November, 1949 -- they reduced the vendor's interest from one million shares in a three million share company to 750,000 shares.

Then the releases from then on depended on the drilling of wells, 20 percent. to the first, and 20 percent. on the second, and 30 percent. on the third and so on down.

But in the case of these shallow Llloydminster wells, three wells counted as one normal well, so we restricted the release in that kind of oil materially, at that time. I must say it had a very excellent practical result.

We found that the companies which formerly

2004

Lennox

devoted most of their efforts to drilling in this shallow field, were going out and trying to get an offset well for distribution in a better and more productive field.

I have dealt with the underwriting and option

--

THE CHAIRMAN: Would you care to adjourn for a few moments, for a little respite.

THE WITNESS: Thank you.

---Whereupon a short recess was had.

---Upon resuming.

BY THE CHAIRMAN:

Q. Are you ready to proceed?

A. Any time, sir.

THE CHAIRMAN: Then I will call the Committee to order, and Mr. Lennox will proceed.

BY MR. JANES:

Q. Mr. Lennox, I am not quite clear on one point. You are talking about this vendor's stock; is that vendor's stock all the property of the prospector, or can a syndicate have vendor's stock, too?

A. No, the prospector gets one-third of the unit as vendor's interest, and he sells the balance of the unit

2005

Lennox

to individuals who eventually hope to participate in a company to be formed, if the thing is successful.

Q. Is that part of the 90 percent. he himself puts in escrow? Is that part of his 10 percent?
A. Eventually, he can sell it all.

Q. I mean immediately, when the company is formed.

A. He would just have 10 percent. of one-third.

Q. And there are no shares of stock which can be granted to the syndicate then?

A. No, they buy it.

Q. Do they have to buy theirs?

A. Yes.

MR. GRUMMETT: That is exactly right.

BY THE CHAIRMAN:

Q. Supposing we take an example; a company issues one million shares out of three million it has to issue to the vendors?

A. Yes.

Q. Whoever it may be. The vendors might be the original prospectors; they might be the syndicate -- if there was a syndicate.

A. Oh, I misunderstood the question. Yes.

Q. The first point is only one million

shares of the company's stock can go in that way?

A. Yes.

Q. Suppose the vendor was a syndicate and the syndicate consisted of one hundred thousand units, the syndicate would get a million shares, probably?

A. Yes.

Q. Thus, --

A. I am sorry, it is 750,000 shares.

Q. 750,000 shares?

A. Yes.

MR. JOLLIFFE: Now. Since the reduction,

THE CHAIRMAN: Oh yes, that is right.

MR. JANES: In this case, the prospector would disappear and the syndicate would have the shares.

MR. GRUMMETT: He might be a member of the syndicate.

THE CHAIRMAN: The prospector would have an interest in the syndicate. He would take down so many units as his share.

THE WITNESS: One-third.

BY MR. JANES:

Q. So only one-third which can be given--

A. We have not interfered with the prospecting syndicates. The prospector selects a piece of ground or stakes some claim and he gets one-third as vendor's interest, but when the syndicate turns their holdings into a n incorporated company, the vendor's interest then in an ordinary transaction is 750,000 shares and the prospector is still the biggest man in that syndicate.

Q. Then the prospector would get shares in the company in proportion to the shares he held in the unit.

A. Yes.

BY MR. JOLLIFFE:

Q. Let us go back to our starting point, and you stop me if I am wrong. Is this not what happens? The very starting point is the prospector himself, who operates either with his own resources or with borrowed money. If he wants to borrow money from a friend to grub-stake him, that is no concern of your Commission?

A. No.

Q. On the other hand, to carry on, he has the right, if he wishes, to organize a prospector's syndicate, under the Securities Act?

A. Yes.

Q. With a capital limited to \$35,000?

A. Yes.

Q. And having staked a claim, he can convey it to the syndicate?

A. Yes.

Q. And he gets up to one-third of the syndicate?

A. They are held in trust.

Q. But, in effect, the prospector's syndicate gets the right to become the subsequent vendor?

A. Yes.

Q. Then, at a later stage, when a deal is arranged, and a company is incorporated with perhaps 3,000,000 shares?

A. Yes.

Q. And the syndicate then conveys the shares to the company?

A. Yes.

Q. Who may now take, as the price of the property, 750,000 shares in a 3,000,000 share company?

A. Yes.

Q. 90 percent. of which, however, must remain in escrow until such time as it is released by you?

2009

Lennox

A. That is the whole picture.

Q. And from there on out, any transaction with the public is governed by the Act, and by your Commission?

A. That is right.

Q. Then, to take the next step -- and be sure to stop me if I suggest anything that is not quite correct -- the company makes an agreement with a broker-dealer, in a typical case, for the sale to that broker-dealer of certain shares on a firm basis, and also grants the broker-dealer an option to purchase any more shares at a future date?

A. That is right, unless the middle-man comes in there.

BY MR. JANES:

Q. What does the middle-man do? Let's get at that.

MR. VILLENEUVE: Yes. Who is the middle-man?

THE WITNESS: They are often known on Bay Street as "taxation companies", because that is how they originated.

BY THE CHAIRMAN:

Q. As what?

A. Taxation companies. They are just professional under-writers and optionees. Why they became so popular was from a taxation point of view, long ago.

BY MR. JAMES:

Q. Can you explain that?

A. That is out of my field. I am very sorry.

THE CHAIRMAN: I do not know as we are so concerned with the taxation aspect of it, but as middle-men, what did they do? What was their position in this series of transactions?

A. This brings us to what I consider one of the most important steps in administration, since my time. These companies with various names -- and you will see their names through the bulletins as under-writers -- have no useful purpose in the scheme of corporate financing, that I know of. They would get options on two million shares at various prices. They would grant a sub-under-writing to the Broker-Dealers, because the Broker-Dealers were the only persons licensed to sell in Ontario. They have to employ a dealer.

The Commission, found, in a very wide investigation -- which started late in 1949 and was crystallized early in 1950 -- that there was a terrific mark-up between the price paid to the treasury

2011

Lennox

by the optionee and his price to the broker-dealer. In this particular case, we found a mark-up of as high as .10¢ between the option price and the sub-option price. Do you follow me?

BY MR. JOLLIFFE:

Q. Is there not more to that than taxation?

A. Oh yes.

Q. Does that not give rise to an extra price spread?

A. That is the whole story.

BY THE CHAIRMAN:

Q. The option price is the only thing which is discussed in the prospectus?

A. Until the Act was amended.

Q. I am talking about this transaction you are out-lin'g that it was not for something that was coming to the attention of the Commission-- or was it? I don't know.

A. We discovered this glaring mark-up in a case reported in the February bulletin, of 1950. That is one which is long out of print so many people wanted it. There was a mark-up of .10¢ apparently for nothing except they paid the transfer tax of the

2012 .

Lennox

Dominion and Ontario, amounting to seven-tenths of one cent, if my memory serves me right.

That case was so glaring that we did not dare publish the details of it in the bulletin because that goes to outside jurisdictions, so in order to demonstrate our findings in case of an appeal to a judge of the Supreme Court, we had prepared a schedule to our decision, but we did not publish the schedule for obvious reasons.

Accordingly, I made a recommendation that the Act be amended to call for the disclosure of all sub-options as well as options, and following that amendment, I introduced a policy that the outside spread between an option and a sub-option would be .02¢. Later I found out that even .02¢ was too much; it was still attracting these people who were on the fringe of the industry, who are of no real use to the industry, so I reduced the spread to one-half cent.

In the meantime, the Broker-Dealers -- and this has a very definite bearing on price spreads - argued with me and said "What is the difference what the spread is between an option and a sub-option because we are only concerned with the price to the treasury and the offering price to the public?".

That argument is not sound, because the

2013

Lennox

price spread fixed by the Broker-Dealers' Association is a maximum. It does not say the dealer has to sell at that price -- it is the ceiling.

The only solution I have with regard to the maximum allowed a broker-dealer is, I would say, 90 percent. of the broker-dealers in this country sell away below the maximum set. It is just a control. The broker-dealers use their own conscience, and keep the thing down to reasonable limits. But how can you expect it to be kept down to reasonable limits, if the optionee is taking a big cut for his profits, before the broker ever gets it?

So it is absolutely essential for the Commission to insist upon a very minor spread between the option and sub-option price, and we have it down to a minimum. It barely pays the transfer tax. I purposely want to cut it down to a minimum because I want to drive that type of operator right out of business.

BY MR. JANES:

Q. Why not legislate him out of business?

A. That is a good point. Maybe I was slow taking over, but I thought the best policy was to feel my way along and see, instead of getting out on a limb, and having

2014

Lennox

to back-water. I have taken it slowly, but I think surely, that may very well come.

The next phase in that battle was that some of these operators out-smarted me. They took shares down under an option, and they did not grant a sub-option at all, but they said "We are selling through brokers or dealers on a commission basis".

That is a pretty hard thing to control, but I think, thanks to the members of the legal profession who are practicing before the Commission, and who have a lot of common sense, we will stamp it out, because I think any lawyer -- and I think Mr. Porter and Mr. Jolliffe will bear me out -- will advise any under-writer or optionee who wants to sell through a broker or agent, that he is running very serious risks indeed on the ground of a principal being responsible for the acts of his agent.

I think I know one or two lawyers who are very capable and well versed in this branch of the law, and they would never permit any client of theirs to run that risk.

So I think we ^{have} /got down to a point where we have that matter fully under control, and I think without legislating certain types out of business, they will be out of business, as a matter of fact,

2015

Lennox

because there is no profit left for them. And in saying that, I have one hundred percent. co-operation from the organized brokers industry.

BY MR. HOUCK:

Q. These operators are the middle-men who are known in the vernacular, as "high-powered salesmen".

MR. GRUMETT: They do not sell.

BY MR. JOLLIFFE:

Q. Let us be clear about the nature of this agreement. I have one here (indicating). I will not use the name of it, but it is a prospectus of a mining company. In this case, there does not seem to be much of a spread, but the prospectus discloses in this case, on the 27th of February, 1951, that the company entered into a contract with -- I will call him "underwriter 'A'", Toronto, as the principal, whereby the latter has purchased 250,000 shares of the treasury stock of the company at .10¢ per share, payable on the 30th day of April, 1951. That was a firm purchase. 250,000 shares for \$25,000.

The company further grants to the said under-writer "A" option to purchase additional shares as follows:

"200,000 shares at .10¢.

2016

Lennox

"200,000 shares at .20¢.

"200,000 shares at .25¢.

"200,000 shares at .30¢

"200,000 shares at .50¢

"100,000 shares at .75¢.

"100,000 shares at 1.00.

"and the balance of shares at a fair market price, but, in any event, not less than \$1.00 per share.

All options to be exercised within twenty-four months of the 30th day of April, 1951."

These were options which under-writer "A" was not obliged to exercise. Then it provides they were to be taken down month by month at a minimum monthly rate of 100,000 shares.

The point with which the witness has been dealing is this; this prospectus --

MR. JANES: Was he a middle-man?

MR. JOLLIFFE: Yes. That is what I am coming to.

BY MR. JOLLIFFE:

Q. I would gather that your under-writer "A" was not a registered broker-dealer?

A. That is right.

2017

Lennox

Q. And he could not make sales to the public?

BY MR. JAMES:

Q. Who could he sell them to?

A. By his second agreement, dated the 19th of April, 1951, under-writer "A" agreed with under-writer "B" to sell to "B" as principal, the 250,000 shares of stock already purchased under the firm commitment, for the sum of \$25,001. There is a difference of \$1.00 as far as the 250,000 shares were concerned, and to assign his rights to a further option on the treasury shares at no increase in price.

BY MR. JOLLIFFE:

Q. Now, Mr. Lennox, can you tell us precisely why that would be done? What is the advantage of a middle-man in that case, paying \$1.00 more than -- or rather, what is the advantage of broker-dealer under-writer "B" paying under-writer "A" \$1.00 more than under-writer "A" paid for the original stock,

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2018

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and then taking an assignment of an agreement, so that under-writer "B" can take down the stock at the same price --

BY THE CHAIRMAN:

Q. I assume that under-writer "B" is a registered broker-dealer?

A. Yes. I think I have the answer for that one-dollar transaction.

Q. A one dollar-a-year man?

A. It is about as bad.

BY MR. JAMES:

Q. There must be some useful purpose, or they would not do it.

A. In the case of an option or under-writing agreement, the directors of the issuing company, or any person who is in the transaction before a public offering is made, wants to disassociate himself or themselves in every way from the securities, so they can tell outside jurisdictions which raise the cry of "fraud" on every provocation, that it has nothing to do with them.

That one dollar is like a sale of a legal document; it shows a consideration passing, and that

2019

Lennox

"B" is not simply a nominee for "A".

I never thought of it before, but that seems to be the only solution for it.

Q. On that transaction, he did not make any money?

A. I do not know why he should. I do not know why he should be in there. Mind you, there are people who promote and finance and take the position of under-writing, who have done a lot of constructive work in this province, and when I am describing the individual, I am describing the individuals described on Bay Street as "taxation companies".

Q. I cannot conceive of a man being in there, unless he makes some money.

A. You remember when I mentioned "sweetening the deal"? They are in there for some purpose.

BY MR. JOLLIFFE:

Q. Is it possible, Mr. Lennox, that the middle-man in this case -- if it was an incorporated company -- was there to obscure some material facts which might otherwise become evident in the prospectus?

MR. JANES: Still he must have got paid for his services.

THE CHAIRMAN: He may have got more of the vendor's stock.

M'R. JOLLIFFE: Why should he? What function did he serve.

THE CHAIRMAN: I do not profess to know. He might have it subject to escrow, and if the mine turned out to be good, that might be very valuable.

Once the mine became established the vendor's stock would gradually be released to the market, and the market could absorb it, and it might be very valuable.

People have made big fortunes out of little chunks of vendor's stock.

M'R. JANES: It would not be traded until it is released.

THE CHAIRMAN: Yes. It is all ear-marked in that particular way.

THE WITNESS: I think it is probably quite logical in this way, that it was necessary to raise money at the outset, and possibly the broker-dealers had no resources, and the under-writer got in there to provide the necessary money in the first instance, and he might have had a future call on a block of vendor's shares, and those shares could be transferred

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still under escrow. They could not be released at the time.

A. I think that could very well be a legitimate transaction all the way through.

BY MR. JOLLIFFE:

Q. It may be explained by the necessity for some credit between February and April?

A. Yes.

BY THE CHAIRMAN:

Q. As I understand it, you make a distinction between the ordinary under-writing company, which in many cases is the real promoter in the transaction, and the company which takes down a block of stock and puts some money into the Treasury of the company, in order to get it going, and then has an option, and eventually disposes of the option at a different price? You are not talking about him, when you were saying he would be "put out of business". You say it is the middle-men that should be put out of business? You are talking about these "taxation companies"?

A. Yes.

Q. That is a special type of middle-man?

A. Yes.

Q. After all, the under-writing by a man who puts up anywhere from ten thousand dollars to twenty thousand dollars into the Treasury in the initial stages, when they most need that amount of money, to do some diamond drilling, and so forth, seems to me to be a very necessary link in the chain.

MR. DONNER: He is taking the biggest chance.

BY THE CHAIRMAN:

Q. In most cases, I understand they know pretty well where they can sell the stock, and the risk may not be as great as would appear. At any rate, they have their connections, and their knowledge of where to go to find the money. They provide the money, that is the most difficult to be raised.

A. I am talking about the "taxation companies". That is not my term; that is a term used on Bay Street. As you know, one of them recently issued a writ against three members of our staff for an injunction.

BY MR. JANES:

Q. Then there are two classes of middle-men?

A. I prefer to put it the other way. I would say that the promoter who puts up real money, as described here, (indicating) is not a middle-man, because he has a func-

2023

Lennox

tion to perform.

BY THE CHAIRMAN:

Q. I wanted to get that clear, because as I see it, the man who performs almost an essential function, might not be a broker-dealer at all? He does not have to be registered?

A. No.

Q. Unless he is actually dealing directly with the public, and selling issues to the public?

A. Yes. But the next step there would be that the broker-dealers should have sufficient resources themselves to perform that function.

BY MR. JANES:

Q. Is it going to be possible to distinguish between those two middle-men?

A. It is not very difficult.

Q. It is not very difficult?

A. No. We can point to the real people who build mines in the promotional field.

BY MR. JOLLIFFE:

Q. Mr. Lennox, what is the next step after these agreements have been consummated, and the company

files the material required by your commission? What is the next step?

A. Any broker or group of brokers who intend to make a public offering pursuant to that must notify the commission. Then they must go to the Broker-Dealers' Association and get their "deal priced right". In other words, they must take the prospectus in to the broker-dealers and show them what the price of the Treasury is, and have a ceiling placed on a fair price.

Q. What is the present spread permitted by the Broker-Dealers' Association?

A. The ceiling in low-priced shares is as high as three hundred percent., I must admit.

In other words, on a ten cent stock, the ceiling is thirty cents.

BY THE CHAIRMAN:

Q. That is a ten cent stock to the Treasury?

A. Yes. The offering price is thirty cents, but I have followed that very carefully, although I cannot give it exactly, but I would think that ninety percent. of the dealers sell under the ceiling.

At this point I might point out that there has been a lot of criticism from outside Press, from across

the border, about the price spread, and they talk about a "mark-up" -- and I refer particularly to the St. Louis Star Times -- that publication is not now in business -- but it speaks about a mark-up of four hundred percent. You cannot say it is absolutely incorrect, but it is based on this proposition, that our bulletins which were introduced and accepted by the whole industry in May, 1950, said there are no stock options under ten cents, but in order to provide for organizational expenses, a maximum of two hundred thousand shares could be under-written or purchased at less than ten cents.

The criticism that is levelled through this paper which attacked the administration of Ontario, talked of "mark-ups" of as high as four hundred percent.

I can show you Canadian issues -- and not Ontario issues -- which were qualified by the S.E.C., where there was a mark-up of eight thousand percent. I do not say for one minute I am offering fair criticism by saying there is a mark-up of eight thousand percent., but I do say that my remark that there is a mark-up of eight thousand percent., is just as fair as the criticism levelled at this administration, that there is a mark-up of four hundred percent. You must look at the over-all picture. I say there was a mark-up of eight thousand percent.

BY MR. JOLLIFFE:

Q. You would say that was qualified by the S.E.C.?

A. That was qualified by the S.E.C. in June, 1950. It shows in very large type, it was a very nice deal on the face of it, because the price to the Treasury was sixty cents, and the offering price was eighty cents, which is only a mark-up of twenty-five percent., which is very fair, but when you read on to the bonus, you will see "200,000 bonus shares under the terms of the under-writing agreement of 'X' company, in addition to its under-writing discount and commission, with also the right to purchase one share of the common stock of the company for every four shares sold by 'X' company, for the account of the company; it has the right to purchase the shares at one cent"-- in other words, if he sells six hundred thousand shares, he has a call on two hundred thousand shares at one cent. "This stock has been registered in addition to the eight hundred thousand shares above described."

In other words, there are eight hundred thousand shares qualified Treasury shares, and two hundred thousand, making a total of one million shares which can be sold at eighty cents, so that the result

of that is that shares taken down from the Treasury at one cent, can be sold to the public at eighty cents, and that is a mark-up of eight thousand percent.

Earlier I mentioned "sweetening the deal"; that is for the vendor's bonuses, but you cannot point to any deal I know of in this province where the deal was "sweetened" by the company. It was from the vendor.

I am not criticising from an over-all point of view. Over-all, it is a pretty fair deal.

I say the St. Louis Star Times issued a booklet, including all these articles, and it left space from the Securities and Exchange Commission, but I do not see why they should pick out a deal comprising two hundred thousand in Canada and talk about a mark-up of four hundred percent., when we can go there and get as clear a case of a mark-up of eight thousand percent.

BY MR. JOLLIFFE:

Q. In the case you mentioned, which qualified with the S.E.C., these shares marked up from one cent to eighty cents; that applied to what proportion of the shares being offered?

A. One-fifth.

MR. JOLLIFFE: I do not think we should hesi-

tate to mention the name of that company. I understand your reasons, Mr. Lennox, for not wishing to get into names, but the fact is that the companies which are involved, as far as your evidence is concerned, are companies which deal with the public, and I do not think you should hesitate to mention names.

THE CHAIRMAN: You mean the American company?

MR. JOLLIFFE: No, the company which has just been referred to, and another company, the shares of which have been offered to the public.

MR. GRUMMETT: These shares were offered in the United States?

MR. JOLLIFFE: I see no reason why the names should not be mentioned. I do not think our discussions should be hampered in any way.

THE CHAIRMAN: I do not see any objection to mentioning the names of companies which have been dealing with the public. I think there might be some objection to mentioning names, if there is some question of suspecting somebody of something or other, but we have no proof of it. We do not want to start a witch hunt, when the job of the Securities Commission

is to get proof, and when they get proof, they act on it.

But these examples -- all the information we have had is really public property now, and your point is -- and I think it is quite well-taken -- as to why the names of these companies should not be mentioned, if there is any value in mentioning them.

MR. DOWNER: It is on the prospectus, and there is no reason why it should be withheld here.

THE CHAIRMAN: As the Commissioner has said, there was an eight thousand percent. mark-up on a limited number of shares. When you look over the deal over-all, it looks to be not an unfair deal at all, and the point I think he was making was that the St. Louis Star Times was looking at some particular block of shares in some particular company here and said that on this block of shares there was a four hundred percent. mark-up, and they tried to make that appear as if this was generally so over the whole field.

BY THE CHAIRMAN:

Q. Am I right?

A. Yes.

Q. It was a distorted picture?

A. Yes.

Q. There is one thing I would like to ask you, Mr. Lennox. You talk about a spread on a ten cent stock; does that same spread run all the way through the other options?

A. No, when you get up to the higher-priced stocks, there is a reduction.

Q. So really, what it amounts to is this; the initial block of shares which has to be sold when the enterprise is in its most speculative stage -- probably the most difficult shares to sell -- to sell those shares a great deal of the expenses, printing and promotional expenses are very heavily loaded in that initial stage, and you say that a larger spread may be allowed on that initial block to get it going, than may be allowed at a later date after the mark-up of the shares may become a little more established. Am I right in that?

A. Yes, Mr. Porter. When it gets to the Treasury, the spread decreases all the way down.

Q. So to get a fair picture, you have to look at the transaction as a whole?

A. Yes.

BY MR. JOLLIFFE:

Q. Just what happens in a case like this; suppose in the example I mentioned, which was just taken from the prospectus I happened to receive here, the spread in price in this case to the optionee is ten cents, and the ceiling would be thirty cents?

A. Yes, and it would more likely be sold to the public at twenty-five cents.

Q. Later on that price gradually rises until it reaches fifty cents, and then there would be a smaller price spread?

A. Yes, the percentage would be much less. I can give you the spread here (indicating).

If the three hundred percent. mark-up obtained throughout, the fifty-cent treasury stock would be sold to the public at \$1.50, and the sliding scale is from \$1.15 to \$1.25, and they would only allow \$1.25, I suppose.

Q. Now, in this particular case, when the optionee has to pay fifty cents for his sixth block of shares, at what can he offer those shares to the public?

A. According to the broker-dealers formula, anywhere from \$1.15 to \$1.25. But they would review every case, and I think if they allowed \$1.25, instead of \$1.15, it

would be because the under-writers had gone firm for a very large amount of money.

Q. Suppose in this instance, in the meantime, the stock was being traded generally as well as those to the public in the course of primary distribution, and suppose a lively market developed for that particular stock, and the price went up above the ceiling price, the optionee is allowed to collect from the public, what happens then?

A. If the stock is a free market, the broker-dealer retires from the picture.

Q. Then the ceiling would be left, in a case of that kind?

A. Yes.

Q. That has happened on occasion?

A. It has happened, and I think it is one of the most difficult practical proposals with which we have to deal, because/the unlisted markets -- the over-the-counter markets -- and it will be hard to determine whether there is a real market, or just a limit of ten thousand dollars or something when, as they say on the street, "They pull the plug out." In other words, they withdraw their support, and then there is no market.

Q. But when that happens, the optionee is

protected? He can, if he wishes, cease taking down any further stocks?

A. Yes. That may be given to a firm of under-writers.

Q. Previous to that time, if a lively market has developed, either through natural causes, or because somebody made a market, and if that market rose above the ceiling price, according to the Broker-Dealers' Association rules, then there is no ceiling?

A. No, not in a case of a free market, but if it is to maintain a market, the broker-dealers have ways and means of knowing it. If it is a made market, there are at least two members who know about it. They will still stay in, if it is a maintained market, but if it is a free market, they step out of control.

Q. If they think it is a genuinely free market?

A. Yes.

Q. Then the practical result is, the public pays very much more for the stock than the treasury is receiving.

BY MR. JAMES:

Q. If there was a free market, would there be treasury stock go on the market, or just this stock?

A. Oh, yes, treasury stock.

BY THE CHAIRMAN:

Q. A free market would generally occur, would it not, when they might have established some value from diamond drilling, or whatever they might be doing, which might prove they have something which has given some greater value to the stock in the minds of the public? Is that what happens?

A. Yes. A market only develops from some form of news, whether it is authentic or otherwise.

BY MR. STANIFORTH:

Q. Some grounds for optimism?

A. Yes.

BY MR. JAMES:

Q. On a free market, would there be two stocks selling, the under-written stock, and the treasury stock, too?

A. The under-writer's stock and the treasury stock.

BY THE CHAIRMAN:

Q. And a free market would be a market where people who have bought shares from a broker-dealer, as I understand, can sell them at a profit, in addition

to further treasury stock coming out and being sold on the market, too?

A. Yes.

M.R. JANES: What I am trying to get at is this; a man under-writes a certain stock, and he is selling that stock. A free market develops, and the treasury is also selling stock. The under-writer would not get a commission on the treasury stock.

M.R. CRUMETT: It would all be sold through the brokers.

BY M.R. JOLLIFFE:

Q. Is this not so -- and this may clear up this matter; during the currency of the option agreement, the optionee has exclusive rights to take down shares from the treasury?

A. Yes, but the company may not have under-written options to all its capital stock. We urge them strongly not to.

BY THE CHAIRMAN:

Q. What proportion of the authorized capital do they generally cover by option? Is there any rule or

practice?

A. A very large percentage, unfortunately.

BY MR. JOLLIFFE:

Q. In some cases it is all the stock?

A. Yes. In some cases it is all the stock, and after all these years, the Toronto Stock Exchange has taken a firm stand that there will be only one million shares dealt with in the one agreement. They realize the Commission cannot take an arbitrary stand like that; we cannot make contacts for the public, but we are using it, and we say, "If you are going to list, you have to meet the requirements of the department."

BY MR. JANES:

Q. I can see where an under-writer might make ten thousand percent on his shares, if the market went out, and he has the only shares?

A. Yes.

Q. He would have complete control of the stock?

A. I can give you a case in point. I mentioned before the CallinanFlin Flon. Then the Callinan Flin Flon started to rise on the market, the optionees exercised

their options; the company had treasury shares, and they took advantage of the market and decreased their treasury, so the Callinan Flin Flon now has profited through that option, and if they have anything now, they have the money to develop it, but there were three operations; the issuing company was selling stock; the optionees were selling stock, and the public was buying. There were three sources of activity.

BY MR. JANES:

Q. That is what I am trying to get at. The under-writer would only get the stock he has an option for?

A. Yes, but if the company has the stock, they are "holding the bag".

THE CHAIRMAN: There is this situation; if they have done it in order to provide sufficient funds to develop the company, under these option prices --

MR. JANES: They would only get an option on a certain percentage. But if they give him complete control, and they go on and develop the company and make it worthwhile, he gets all the profits.

THE WITNESS: Yes. It would be all right if the company did not grant any options at all, but simply sold their shares through their broker as an agent.

BY THE CHAIRMAN:

Q. Is it not almost essential to have some promoter to take it over in the initial stages?

A. Not necessarily. If a company can get someone to buy sufficient shares outright in the first instance, I do not think they would need a promoter.

Q. Is it not a real inducement for a person to put a large amount of money into a speculative enterprise -- is that the only inducement he would have, that is, in a series of options where he hopes to make a large profit, if the enterprise turns out well?

A. I was only speaking of the ideal, sir.

BY MR. JOLLIFFE:

Q. Would the use of the word "promoter" cause any ambiguity in these discussions? The words "promotion" and "promoter" have come up several times. There may be a promoter who promotes the company, and

there may be another who promotes the demand for shares. You used it in that sense?

A. Yes.

Q. Are there any cases where the promoter of a company and the promoter of the demand for shares is one and the same person?

A. Yes.

BY THE CHAIRMAN:

Q. That could very well happen?

A. Yes.

Q. In that case it would not make any difference with your office. If the control of the shares themselves and the control of the policy is vested in the same person, it would not make any difference?

A. From our point of view, it is only a matter of education. You can tell the people that if they are anticipating making an application for listing on the exchange, these are the requirements they have to meet, and would it not be advisable to follow those requirements on the outset? The Toronto Stock Exchange will not list a stock in excess of 200,000 shares at one price, and every jump must be five

cents, instead of $2\frac{1}{2}$ cents or 2 cents, as you see in some of these promotions.

BY MR. GRUMETT:

Q. Could not that promoter or under-writer who undertakes to sell stock or shares, some at a certain price, some at a greater price -- and yet at the same time he could tie up the company so that the remaining stock must be held until he disposes of the stock he has taken over?

A. Yes, that is accomplished by contract.

BY THE CHAIRMAN:

Q. That is a question of contract?

A. Yes.

MR. GRUMETT: That is the point Mr. Janes was trying to make, I think. The under-writing company which undertakes to sell the stock in the first instance, they would undertake to sell it for a certain price, and, at the same time, they would protect themselves by saying to the company, "We must be allowed to sell our stocks at the price we have agreed upon before you, as a company, attempt to sell the remaining shares on the market."

THE WITNESS: Oh, yes, that is often done.

The under-writer does that for his own protection.

BY MR. JOLLIFFE:

Q. He does not want any competition from the treasury of a company, while making his market?

A. No.

MR. JANES: I cannot understand any company under-writing all their shares --

THE CHAIRMAN: It depends on what deal they can get.

MR. GRUMETT: And how valuable the property is.

BY MR. JOLLIFFE:

Q. To be practical about this; is it not true that in a great majority of cases the option agreement is not fully exercised?

A. Very often.

Q. That is, in a majority of cases in the financing of this type?

A. It happens frequently. They naturally do not exercise every option for the property; unless it

looks like a worthwhile property.

BY MR. JANES:

Q. Is it right, if an under-writer under-writes all the shares of a company, he is buying that company?

A. Yes. The ownership of shares is the company.

BY MR. JOLLIFFE:

Q. Oh, no. I think you misunderstand Mr. Janes --

A. Treating under-writing as an outright purchase?

MR. GRULIETT: But an option is a different thing.

MR. JANES: If he under-writes all those shares, he gets complete control?

BY MR. JOLLIFFE:

Q. Is this not what happens? The under-writer who exercises his option does not purchase the shares and hold them for the rest of his life; he purchases them and markets them to the public.

A. In a vast majority of cases. I know some big mining companies will under-write a big lot of

stock -- when I say "big mining companies", I mean those with millions of dollars of assets. They have no intention of selling those shares, but they are listed on their books as assets. In under-writing, they do not intend to sell.

Q. Is it not a fact, that in a majority of cases the broker-dealers are, in the main, exercising an option to take down stock from month to month, which stock they market to the public?

A. That is right.

BY THE CHAIRMAN:

Q. That is their business?

A. Yes.

BY MR. JOLLIFFE:

Q. They take the risk of being able to sell them to the public at a higher price?

A. Yes.

Q. And if they find they cannot sell them, they abandon the option?

A. Correct.

Q. And in a majority of cases, the options are not fully exercised?

A. You may be perfectly correct, but I have studied our records over a period of years, and I think the situation is vastly improved over a period of years, that there are not as many --

Q. I am not casting any judgment on it.

I am not discussing it on the merits of the situation at all, but I want to get at the facts as to what happens in regard to the customary methods of financing and development, and I suggest to you, in most cases, an option agreement, which runs over a considerable period of time, is not exercised fully, that is to say, it is exercised in part, but not fully, down to the last month and the last block of shares.

A. I will say there are a great many cases like that.

BY MR. GRUMETT:

Q. A company may not have shown value, and there is no further demand for the stock; therefore, the brokers abandon the last three or four issues they were granted under the option agreement?

A. Yes. I think an obvious case would be with an oil company. Supposing they had three "dusters",

and they spent all the money they had in drilling different wells. It would be 100 to 1, they would abandon the option.

BY THE CHAIRMAN:

Q. The same thing would apply to mines.

They carry on a diamond drilling campaign based on the engineer's report, and they find, after putting down a reasonable number of holes, they do not strike anything, they would have great difficulty in selling that stock, and would abandon the remaining option? That is what happens?

A. Yes.

BY MR. JOLLIFFE:

which

Q. There might be other reasons/would affect the sale of the stock. It might be that the broker-dealers did not have the ability or resources to carry through the sales successfully? That could happen?

A. That could, yes.

Q. And then, too, there is also the case where it sometimes happens during the course of the primary distribution, your commission suspends or cancels the broker dealers' registration?

A. That has happened.

Q. That would pretty well put an end to the project, if that happened.

THE CHAIRMAN: Unless he assigned it to some other broker-dealer, to carry on.

THE WITNESS: If the property had any merit, there would be no trouble in passing an option. But if the issue was given under an agreement with an unsuccessful broker-dealer, that may act to the detriment of the company.

BY THE CHAIRMAN:

Q. It might give the company a black eye?
A. Yes.

BY MR. JOLLIFFE:

Q. If the company had some merit, and if the sales promotion of the broker-dealers were such as to make it necessary for you to suspend or cancel his registration, an assignee would not be in a happy position to carry on from there, after the publicity surrounding the transaction.

A. That is a factor, yes.

I might bring up a case in point. The regis-

tration of Harry Price and company was cancelled. His registration was cancelled, but the company immediately took steps to replace the option, and engaged the services of another broker-dealer.

Q. That would involve writing a new option agreement?

A. Or an assignment.

Q. There might possibly be an assignment?

A. Yes.

BY MR. JANES:

Q. If a company allows a broker-dealer to under-write their particular issue, and it is not limited by the commission, they go on multiplying the price, and that broker dealer makes all the money.

THE CHAIRMAN: He has the chance of making a lot.

MR. GRUMETT: Of the series he has under the option.

MR. JANES: If they option them all; if he has one hundred percent., he gets the whole thing.

THE CHAIRMAN: Then the people who buy them on the market have a chance of making more money.

BY MR. HOUCK:

Q. Before we get too far away, is there any reason the Committee should not know the name of the company which had the eight thousand percent?

THE WITNESS: I do not like to mention the name. It is not an Ontario company. It is from another province, and it is not qualified by the commission. I looked up the company, and although it was qualified by the S.E.C. in June, 1950, it is inactive now; it takes about a year to qualify down there.

But I hesitate to mention the name of a company from another province, in case my motives --

BY MR. HOUCK:

Q. You mentioned the name of a company from this province?

A. That is a matter of record.

THE CHAIRMAN: I think the Commissioner, is

taking the right attitude. If Mr. Houck is interested in knowing the name, he can look at the document. I do not know that there is anything to be gained in crossing wires with other jurisdictions more than is necessary, although they have crossed wires with us, on occasion.

THE WITNESS: I am sorry I mentioned the name, but it is a matter of record.

MR. JOLLIFFE: I do not think there is any reason why the names should not be mentioned. The members of this Committee will have to use their good judgment about it. I do not propose to be inhibited in that regard at all; if I think I should mention the name, I will not hesitate to do so.

As regards that case, the telephone plays a very important part in our civilization, and this company is a Canadian company, as I understand it, which is not incorporated in Ontario, and is not registered with the Ontario Securities Commission, so there is nothing to prevent a salesman in any other province telephoning to somebody in Ontario, and there is nothing to prevent him stating on the telephone that this company is qualified with the S.E.C.,

and that statement would have a strong influence on the mind of a prospective customer in Ontario. I think we are in a position where a company anywhere in the country who offers shares to the public, may have an interest in regard to prospective customers in Ontario.

THE WITNESS: I was not criticizing the over-all picture.

THE CHAIRMAN: This was an example?

THE WITNESS: Yes, Mr. Porter, this was an example of some person picking out an isolated part of a deal and emphasizing it was prejudiced by the Ontario Commission. I pointed out that if we followed that procedure, we could point out a mark-up of eight thousand percent.

I think it was a very fine deal, over all.

MR. JANES: Mr. Jolliffe mentioned a subject I wanted to bring up about selling shares by telephone, and the number of transactions which are taking place over the telephones to prospective buyers outside the province entirely, in California and all over, where there is so much criticism arising, criticizing the Securities Commission, and the Stock Exchange in

Ontario for allowing that to go on.

It seems to me we should spend a little time on that, to see what we can do to assist in cleaning up that situation.

THE WITNESS: Naturally, when I heard I was going to have the pleasure of appearing before this Committee, I understood that would be one of the major considerations, and such preparation as I have made, has been directed to that aspect of it, in a large measure.

BY THE CHAIRMAN:

Q. And we have been getting the foundation for that?

A. Yes.

THE CHAIRMAN: I think this would be a good time to adjourn, until this afternoon at 2.30.

---The witness temporarily retired.

---Whereupon at one o'clock p.m., the further proceedings of this Committee adjourned until this afternoon at 2.30 o'clock.

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A F T E R N O O N S E S S I O N

Toronto, Ontario,
Wednesday, July 25, 1951,
At 2.30 o'clock p.m.

- - - - -

---The further proceedings of this Committee reconvened pursuant to adjournment.

---All parties present.

---Same appearances as heretofore noted.

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THE CHAIRMAN: Gentlemen, the meeting will now re-convene. We will proceed with Mr. Lennox.

OSCAR ELMER LENNOX,

A witness previously heard and now recalled, who, having been already sworn, continues his testimony as follows:

BY MR. JOLLIFFE:

Q. There is another aspect to the organization matters which I would like you to clarify. Since the enactment of the Broker-Dealers' Act, Mr. Lennox, there was a considerable period during which some

broker-dealers were members of the Broker-Dealers' Association, and some were not; that is so?

A. That is correct.

Q. And, in fact, in some issues of your bulletins, you indicated on the list of broker-dealers which ones were not members of the B.D.A.

A. Yes.

Q. With an asterisk?

A. Yes.

Q. Do I understand there has been some change in that situation recently?

A. I think there was very good reason at the time for allowing the registration as Broker-Dealers, without compulsory membership in the Broker-Dealers' Association. I think that was a move which really brought the association into line.

But when the broker-dealers started to improve their organization and introduced a constructive policy, and especially when it began to/question of providing a blanket bond -- a ten thousand dollar bond -- for broker-dealers operating in Toronto, as a practical problem, it was essential that all registrants should belong to some association or another, within the meaning of the Act.

Q. Then, let me ask this question; when the Securities Act of 1947 was passed, did the Broker-Dealers' Association exist -- it did not exist then?

A. No, it came in subsequent to that.

Q. In fact, it really dates from the Broker-Dealers' Act of 1947?

A. That was before my time, but I think they came in concurrently, because the Securities Act of 1947 anticipated the formation of the Broker-Dealers' Association.

Q. It is mentioned in Section 1(b):

"Broker-Dealer" means any person or company who is a member of the Broker-Dealers' Association of Ontario and such other person or company recognized by the Commission as a broker-dealer who engages either for the whole or part of his or its time in the business of trading in securities in the capacity of an agent or principal."

A. Yes.

Q. So, apparently, if one is to look at that definition, it was contemplated when this Act was passed that there would be or there was a Broker-

Dealers' Association, and that some broker-dealers would be in it, and some would be outside of it.

A. I think the common conception of the meaning of that definition at the time, insofar as it allowed for registration outside of the Association, was as a safeguard against the Broker-Dealers' Association being arbitrary, or prejudiced against certain individuals.

Q. Well, at the same time, apparently the Broker-Dealers' Act of 1947 became law, and it appears to have created the Association, in that it says;

"There shall be an association to be known as the Broker-Dealers' Association of Ontario, which shall be a body corporate."

And the first Board of Governors were appointed by Order-in-Council?

A. That is correct.

Q. How long was it after that Act became effective, that you had some broker-dealers within, and some without the Association?

A. At the time, I took the stand covering the fiscal year ended March 31, 1951, and I have taken a different stand for this fiscal year.

Q. In other words, do you mean when licenses were renewed, or applications were made for renewing at the end of March of this year, you required all broker-dealers to be members of the Association?

A. Yes.

Q. So the change in the situation dates from the first of April of this year?

A. That is right.

Q. Please understand that at the moment I am not concerned about the merits or demerits of that change; I am not taking a position on it, one way or the other. I probably do not know enough about it, but one thing which does interest me is, are you satisfied that you had the authority under the two Acts to do that, that is, to say, did you have statutory authority to require that all broker-dealers should be members of the B.D.A.?

A. I must confess, Mr. Jolliffe, it is a doubtful question. I know I am my own authority. The only satisfaction is, I think, that I say that the Brokers-Dealers' Association, by taking that action.

Q. That may be, and I am not concerned at the moment about whether you did the right thing or the wrong thing; I do not know at the moment. What

I am concerned about is the legal position.

A. May I see the Broker-Dealers' Act?

Q. Yes (Document handed to witness),

and I would call your attention particularly to Section 5, Sub-section 2 of the Broker-Dealers' Act, which is on the second page.

A. Yes, I recall that section.

MR. JOLLIFFE: Perhaps the Chairman would read it.

THE CHAIRMAN: Section 5, Sub-Section 2, reads:

"No regulation made under this Act shall interfere with the right of any person other than a member of the Association to carry on business as a broker or dealer in securities, or otherwise."

BY MR. JOLLIFFE:

Q. Now, Mr. Lennox, if you take that subsection, in conjunction with the definition of a "broker-dealer", in the Securities Act, which appears to have contemplated that some broker-dealers would not be members of the Association,

from what section of either Act did you derive authority to make membership compulsory?

A. I think the plain intention of the definition of "broker-dealer" in Section 1(b) that membership in the Association should be a condition precedent to registration as a broker-dealer, with this qualification, that the Commission can over-ride that provision in case of unfairness or partiality on the part of the Broker-Dealers' Association, or the Board of Governors.

I think the position in the Broker-Dealers' Act is just parallel to this statutory provision, and I think my case was fortified by the stress laid on the provisions of the Act "In the public interest".

I do not like to ~~rest~~ too many things on that phrase, "In the public interest", but I think it supports my stand in either case.

BY THE CHAIRMAN:

Q. In other words, it was a policy you laid down and have carried out since that time, in carrying out registration for broker-dealers?

A. Yes, and it was invoked at a very serious and critical time in the history of securities adminis-

tration of this province.

BY MR. JOLLIFFE:

Q. Would you explain that statement? Because I gather from what you have said, and other statements you have made, that you regard the Broker-Dealers' Association as a very important part of the administration of the act, or a/necessary branch for the proper conduct of the business.

When you say that at the time you took the decision to make membership compulsory, the Broker-Dealers' Association was in a critical stage, exactly what do you mean? What was the difficulty?

A. I have stressed, as you suggested this morning, that the whole theory of the foundation of the Broker-Dealers' Association is sound -- in theory -- and that the indications are now that it is going to be very sound, in fact.

When I talk about "critical situations", I might as well be very candid, and say that at one time there were about 200 broker-dealers registered with the Commission, and a very large percentage of that association from its inception thought that the information of that Association was nothing but

an organization to facilitate them in their extravagant methods; that they thought it was a protection, and they looked to their Board of Governors for protection in accomplishing what they had in mind.

Q. You mean that a large number of the members of the Association did not regard the Association as a self-governing body in the business, but as something else?

A. Exactly.

Q. They did not look at the Association the same way you did? Is that what it amounts to?

A. They did not look at the Association in the same way as I hoped to look at it.

Q. Can you be more specific about that? In what way did they prejudice the Association itself, and bring it to the "critical point"?

A. I can give you a very definite illustration. When attempts were made to control this question of excessive mailing to the United States, the first Board of Governors called a meeting of the entire Association, and they agreed upon an "armistice", as they called it -- a sixty-day stay based on the proposal; that each and every member in the Association would refrain from mailing to the

United States for a period of sixty days, with this exception; that any member who actually had mailing prepared -- that is, his printing prepared, and ready to go, could complete that send-out.

There was a select little few who had their mailing all ready to go, but after that it was just a question of human nature, a cry in the street,--when it was discovered that they had been sabotaged, and double-crossed, -- and I believe they were.

That was a very serious state of affairs.

Q. When was this sixty-day armistice?

A. That was in February of 1949, I believe.

Q. Do you mean from that point on the Association was not successful in restraining the activities of its more exuberant members? Is that what you mean?

A. What I am trying to convey is that certain members of the Board of Governors knew that this was going to be suggested to the Association as a whole, and there was a league -- a certain faction -- in that Association, and the thing developed to such an extent that two members out of nine of the Board of Governors resigned, and refused to continue on.

Q. That was in 1949?

A. They resigned in 1949, yes.

Q. Was that the original Board which had been appointed by the Government to start the Association off?

A. Yes. But I wish to make this very plain -- I am making quite a few remarks about the "Board of Governors." There were some very fine men on that Board.

Q. I do not doubt it, but, by the same token, there were some of the other kind?

A. The results showed that, Mr. Jolliffe.

Q. In fact, is it not so that one of the members of the original Board of Governors was subsequently suspended as a broker-dealer by you -- at least one?

A. Actually, his Company was. He was operating as an incorporated company.

Q. Although in your decision you dealt with his own conduct?

A. Yes.

Q. And you found him to be unfit to operate as a broker-dealer?

A. Absolutely.

Q. Now, you say these developments led up to a critical situation, which led you to change your mind about compulsory membership; is that correct?

A. Yes. I think it boils down to this; where I

consider Section 1(b) as safeguarding individual cases, it came to the point that it was a blanket safeguard when certain members -- who were immediately called by the Board "rebels"; I do not know why -- came to me and made representation that those people who, as a group, were entitled to carry on as broker-dealers in this province without being forced to be members of the Association, according to the conduct of the Association at the time.

Q. You did not feel at that stage the B.D.A. was sufficiently well established to merit a sort of monopoly in the field? Is that it?

A. I would not quite put it that way. To put it differently, really, I thought they really needed a good dose of medicine, and they got it.

Q. A "good dose of medicine" in what way -- and what did they get?

A. They got something -- the Broker-Dealers' Association according to their own standards, lost the fees of thirty-three members and I think that is what they were primarily interested in, in building up the organization, that is, the fees and revenues, so that they could run a publicity campaign, and so forth.

Q. Thirty-three members resigned?

A. Yes, thirty-three members resigned.

Q. Was that as a result of the break-down of the sixty-day armistice, you mentioned?

A. Oh, Mr. Jolliffe, I just gave that as one outstanding illustration. It was a series of dissatisfactions. I can give you another one.

I know the danger of Bay Street "blowers"; it is the most vicious thing in the world. But when member after member -- and there are a lot of fine people amongst them -- would come and represent to me, or other members of the staff -- our audit department, and so forth, that as soon as it was known that one of the member's financial resources was falling a little below, that would become known throughout the Association, and he would be approached with a proposition for financial aid; in other words, he would cease to be an independent operator.

Q. He would become a "friendly enemy"?

A. Yes.

Q. Is this a fair suggestion, Mr. Lennox? It has been suggested that certain dealers wished to remain outside of the B.D.A. for different reasons -- and I mean by that, that one man might have one reason, and another man might have another reason;

would you say it is correct that some members wanted to remain outside the B.D.A., because they did not think the B.D.A. was doing a successful and satisfactory job?

A. Yes.

Q. They made representations to you, to that effect?

A. Yes.

Q. Is it also true to say that some wanted to stay outside the Association, because they did not want the Association to know what they were doing? Is that right?

A. Yes, it could be -- from one aspect. They did not want the Association to know about their financial standing, but it became common knowledge. I have never heard any criticism directed to the Commission about the members' financial standing, leaking out to the general public.

Q. Assuming that some of them had different reasons for not wanting to be in the B.D.A.; when you came to make a decision about this matter, in the early part of this year, was there not some rather bitter opposition to compulsory membership?

A. Yes. That is probably an understatement.

Q. Would you like to enlarge on that.

A. To emphasize the correctness of it, I have had very, very many representations.

Q. From broker-dealers?

A. From people who have formerly been outside the Association.

Q. Some of them reputable broker-dealers, would you say?

A. Oh, definitely.

Q. And some would not quite fall into that category? Would that also be true?

A. On the record, they would fall into that category of being reputable, because during the time there were thirty-three stand-outs, there was not a single cancellation and no serious complaints against any of them.

Q. When did you reach this decision?

Do you recall that?

A. I think I reached the decision around Christmas or New Year's. That would be in anticipation of the registrations, which would commence in March, 1950.

About Christmas time, I was debating the thing in my own mind, and finally reached a decision before the registration period.

Q. It was really a policy decision?

A. Yes; that is a fair way of putting it.

Q. Was the ultimate decision made by the

Ontario Securities Commission or by the Ontario government?

A. By the Securities Commission.

Q. Your Commission accepts responsibility for that?

A. I accept the sole responsibility. I did not even discuss it with the other Commissioners.

Well, when I say "I did not discuss it" -- we may have discussed it, but I did not really put them "on the spot" by saying "do you think I am right or wrong?", because they have not been close enough to the picture.

Q. Did they agree with the decision?

A. Well, I think one of them felt just as strongly as I did on the question.

Q. Well now, the matter seems to be of some importance; at least, a good many people in the business seem to think it is of great importance, whether they are for it or against it; would you mind summarizing your reasons for making that decision.

A. I will say that the Board of Governors, as it was then constituted, was not advancing a single constructive point. All they were asking for were concessions from the Commission, to do away with this, to make recommendations to the government, to

do away with prospectuses, but to do absolutely nothing constructive. They did not have the respect of their own members -- at least a very substantial portion of them; their actions about the so-called "mailing armistice" -- putting it in common language -- was nothing but a straight double-cross; there were leaks going out from the Board of Governors respecting the financial standing of different members; two of the Board of Governors became so disgusted that they resigned; one of them gave the lame excuse of health, but we can take that with a grain of salt.

Q. Diplomatically speaking, as it were?

A. Yes. I have a certain amount of sympathy for some of the stand-outs who do not want to go back into the Association, but I think the policy requiring every member of the Association should post a blanket bond is important, and I do not know how you can introduce these constructive ideas without the support of the organization. This question of price spread is important.

I know at first, when the Commission had to deal with the question of price spread, with non-members of the Association, they made so many representations about there being a "free market", that it was absolutely impossible to deal with it.

You will realize, Mr. Jolliffe, that the over-the-counter, so-called, which we have in this city is such that it takes a person who is very well versed in the brokerage business -- not in the administration, but in the actual work-a-day business -- to know when it is a market, or just a maintained market.

There are so many practical considerations. However, I finally got the idea that this, which was so good in theory , would work out, in fact, but it certainly was pretty rough going for me. I used to have deputation after deputation going over the same ground, but I thought I was right, and I did it. It was tough for me to do it.

Q. I am not sure that I follow you. I take it there were powerful reasons in your mind for making this change around Christmas or New Year's, or whenever you made up your mind.

A. I think I have given some very powerful reasons.

Q. I want to be sure I do not misunderstand you. You have indicated that during the first two years, or the first twenty-one months -- of the life of the B.D.A., while you went on the theory the thing was absolutely sound, you did not think it was working out satisfactorily, and you have referred to

"resignations", and so on; but did that lead you to the conclusion that membership in the Association should become compulsory.

A. I had better break this down to another period, the first period when I was absolutely new to the job, and probably not quite as efficient as I should have been, and the broker-dealers were getting their own way pretty well, and everything was fine.

It was when I woke up to a view of these "gimmicks" -- as they call them down on Bay Street -- and started cracking down on them, is when the trouble started.

To repeat, I think there is discretion in the Commission, and if there were a series of applications made -- if "A" "B" "C" and "D" came up and said, "We want registrations and we want to exercise the discretion vested in you by virtue of the definition of 'broker-dealer'" -- I think the Commission could deal with those cases if each and every one of them could show that something which was before the Board had leaked out to the Association.

As a practical matter, a group comprising of about thirty-three individuals made these representations -- or I mean their spokesmen did -- probably as many as ten or twelve came up at one time,

and perhaps two or three at another time -- and made these representations, and said it was not fair that they should be forced to belong to the Association. I took this as referring to the way in which the Business Dealers' Association was being conducted.

Q. You were not satisfied yourself?

A. Absolutely not.

Q. How did you come to the conclusion that that problem could be solved? Did you get some assistance in solving it, by getting them all to believe it was because it was entirely a new Board -- it was substantially a new Board -- which took office.

A. They started to do good work, and the question came up and was under consideration -- and it is now a fact -- that we required every member of the Broker-Dealers' Association to have a blanket bond, which is a very important thing, and I did not think people should evade that bond by just simply staying out of the Association. The words in the Act, "In the public interest" are important words, and we got to the point where with the Board of Governors operating as they were, the Association was working in the best interests of the promotional houses. I took that stand.

I would like to enlarge on the question of the bond.

The penalty bond under the old Act I think was more of a detriment than anything else, because all that was required to get a bond like that was to put up collateral, a broker could get a five-thousand-dollar bond by putting up five thousand dollars of collateral.

What would that do? It simply deprived him of five thousand dollars of working capital; it did not mean anything to some people; it was only a drop in the bucket. But it meant quite a lot to the small fellow doing a small, conservative business.

This bond is not the toughest bond in the world, but it is important.

MR. JOLLIFFE: Perhaps I should apologize to Mr. Houck for taking up so much time, but I would like to get the broker-dealers clarified.

MR. HOUCK: That is quite all right, Mr. Jolliffe.

MR. JOLLIFFE: One of the things I wanted clarified is the history of the bond requirement.

MR. HOUCK: Just proceed, Mr. Jolliffe. It is quite all right.

BY MR. JOLLIFFE:

Q. Would you mind out-lining that, from

the inception of things, under the present Act? If you could tell us what the situation was when the present Act was proclaimed; what changes were made by the Commission or the Association since that date?

I think If you tell us that in chronological order, we would get the picture.

A. On the request of the broker-dealers, away back, starting in 1948, and the representation of the Ontario Securities Commission, the penalty bond as provided in that Securities Act, then in force, was abandoned.

Q. What was it at the beginning? What was the requirement at the beginning of your operation?

A. \$5,000. for a broker, and \$1,000. for a salesman.

Q. That was required under the Act, or by regulation?

A. Under the Act.

Q. And they made representations to you that it should be removed?

A. Yes.

Q. And it was removed by an amendment to the Act?

A. Yes, in the 1949 Session.

Q. So, from 1949, until recently, a bond was not required?

A. No.

Q. What changes are now under way?

A. The changes are already an accomplished fact. I have the bulletin here (indicating) which describes the requirements of the bond for any person applying for registration as a broker-dealer.

That bulletin was issued in May, 1951, but the whole thing was planned before that.

Every new member who lived in a large centre, such as Toronto, Hamilton, Ottawa, Windsor or London, had to post a blanket bond of \$10,000.

Q. This was a requirement of the Association?

A. Yes.

Q. Not of the Commission?

A. Yes.

Q. Yes?

A. Shortly after that, the requirement was enlarged so that every member of the Association must post a bond before the 1st of October next, 1951. Since April 1st, there have been several people who have been unable to get that bond.

BY MR. GRUMMETT:

Q. Have been "able" or "unable"?

A. Unable.

BY MR. JOLLIFFE:

Q. Forgive me if I missed something. This decision of the B.D.A., requiring a bond, was on what date?

A. I have not got the date. The bulletin went out on May 16th.

Q. And it became effective when?

A. It was already effective then in the case of persons applying for new membership. As of the 1st of October, it will be applicable in the case of all existing members. Each member must post that bond on or before October 1st, or they will be refused membership in the Association.

BY THE CHAIRMAN:

Q. Have you got a copy of the bond?

A. I have it in another file, I did not bring it down.

THE CHAIRMAN: It might be interesting to see what the terms are.

MR. JOLLIFFE: Yes, I think that would be worth seeing.

BY MR. JOLLIFFE:

Q. Is this required of both broker-dealers and salesmen?

A. No, only broker-dealers.

Q. And the amount is what?

A. \$10,000. in the large centres, and \$2,000. in the smaller centres.

Q. That means, in effect, \$10,000. in Toronto.

A. Toronto, Hamilton, Ottawa, London and Windsor.

Q. And \$2,000. in other places?

A. Yes.

Q. And it follows that those members who fail to produce the bond before October 1st, will become disqualified after October 1st?

A. Yes.

Q. And will forfeit their membership in the Association?

A. Yes, they forfeit their membership in the Association, and the Commission will automatically cancel their registration, because I do not think any person who cannot get that type of bond, is fit to carry on business.

Q. Your Commission has approved that requirement?

A. Oh yes, the Commission has to approve that requirement.

Q. What I am getting at is, that you agree with it?

A. Yes.

Q. You do not disagree with it?

A. No; I certainly agree with it.

Q. Does that not represent a complete change of front on the part of the B.D.A. from two years ago?

A. Yes. I think it shows that the B.D.A. is finally realizing it must clean up the situation itself, in its own interest.

Q. I would like to ask you about this statement of their own position, published apparently in March, 1950, by the broker-dealers in Ontario (indicating), and it is called "self-government in the securities industry".

I take it this was published at a time when you were not satisfied with the success of the B.D.A. up to that date?

A. That is right.

Q. 1950?

A. Yes.

Q. And I notice it recites the functions, responsibilities, and achievements of the B.D.A., and then I notice under the heading of "Legislation Committee" -- the pages are not numbered, but I am quoting verbatim from this booklet as follows:

"A notable feature of many trade associations is the legislative "lobby" which has been established to protect the interests of the particular industry. Although the B.D.A. has not set in motion any such "lobby", it has nevertheless appointed a Committee which is constantly studying the application and interpretation of securities laws in Ontario. This Committee reports to the Board, which in turn may or may not recommend to the Ontario Securities Commission amendments of, or deletions or additions to, existing laws."

Then, on a later page, where we are told of the achievements of the B.D.A, this appears -- again under the heading of "Legislation";

"The Legislation Committee has already obtained an amendment to the Securities Act of 1947 in the elimination of bonding requirements for Members and Associate Members. At the present time, this Committee is also working toward two other amendments to the Act.

One of these is the elimination of Section 57, which forbids calling a private residence either on the telephone or in person, within

or outside of Ontario, for the purpose of trading in any security unless certain specified conditions have been met. Admittedly, this Section was drafted into the 1947 Act as a result of past abuses, but with the B.D.A. exercising a general supervision of its membership in addition to the enforcement of the Act by the Ontario Securities Commission, it is no longer believed to be anything but a drag on business. Even the strictest securities legislation in force today -- the S.E.C.-- does not prohibit calls at private residences. A second amendment being sought concerns the compulsory delivery of a prospectus before the completion of the sale of a security. It is felt that the mechanics of this should be eased by putting the onus more on the purchaser to request a copy, the broker-dealer having advertised with sufficient clarity that one is available upon request."

Now, putting aside any amusement one might feel at this recital, it amounts to this; that in this document, the boast is made that the Association had already obtained an amendment to the Act

eliminating the bond requirement and it was endeavouring to obtain a further amendment removing restrictions on telephone calls and personal calls, and removing the requirement that the purchaser must be supplied with a prospectus. Is it correct that it was this sort of activity which made you so doubtful about the governing of the business by the B.D.A.?

A. No. I think they attached new importance to the bond. They made the suggestion to me, and I went to Mr. Blackwell, who was Attorney General at that time, with a request. I do not know that they did any more with it. I was satisfied there was merit in their request. As I have pointed out, I did not think that type of bond did any good. I thought it would be detrimental. They mentioned the other things they are striving for. They have not got them yet.

Q. Do you agree with the proposal that the restrictions on telephone calls should be removed?

A. Not at the moment, no, Mr. Jolliffe.

Q. Do you agree with the suggestion that the compulsory delivery of a prospectus should be removed?

A. I would say that it could be discussed intelligently when broker-dealers have improved their literature vastly, that the literature they send out has

pertinent, over-all facts in it, and I think it would be fatal to deprive the public of the prospectus, and leave the public open to all types of literature they may send out.

Q. Does that not go ^{to} the root of the Act about "full, complete and plain disclosure"?

A. We require a delivery of the prospectus. The S.E.C. say they do not require a prospectus and they simply say it must be delivered on request.

Q. Have they abandoned a request for those two changes?

A. Not altogether, except, I think the Broker-Dealers, under their present Chairman, are just a little more constructively approaching a number of things, and abiding their time instead of coming up every week. I think they are working towards it. I think they know

they are going to get that provision about, for instance, the delivery of a prospectus, and they must produce circulars and other material to be delivered to the public, which are factual, and not more or less meaningless, in any event.

Q. They have changed their opinion about the bond on their own initiative?

A. Yes. I will say pretty much on their own

initiative. They came up with the solution, and they know that the Commission has always been urging them to do something constructive.

Q. We will know better when we see the conditions in the bond, just what is intended, and what it is intended to guard against, and that, you say, will be in full effect, as from October 1st?

A. Mr. Jolliffe, do not let me mislead you. I do not think the bond is very stringent; I think it is one that the average prudent business man will take out.

Q. I am interested in that, and that is why I am interested in the intention to require the bond.

A. It has already weeded out a few people.

Q. What do you mean?

A. It has prevented certain individuals from obtaining membership in the Broker-Dealers' Association.

BY THE CHAIRMAN:

Q. Because they cannot get a bond?

A. Yes.

BY MR. JOLLIFFE:

Q. Are these bonds to be supplied by a bonding company?

A. Yes.

BY MR. GRUMMETT:

Q. Has the Association any control over the granting of these bonds? That is a very dangerous situation.

A. No, they have no control.

Q. Have they any means of controlling the granting of the bonds?

A. No.

MR. JOLLIFFE: Is it not probable that the bonding company will ask the Association?

MR. GRUMMETT: Yes, and the Association can block new applicants.

THE WITNESS: I issued a decision recently, where I pointed out to the Broker-Dealers the danger of this thing, and that they may attempt -- this does not turn on the question of whether the Board of Governors would probably exercise their discretion in reviewing each man's registration -- but it is perfectly obvious there is danger that they could restrict, and it is not in their own interest. That is rather an important question.

BY MR. GRUMMETT:

Q. A "closed shop" of their own?

A. Yes.

BY MR. JOLLIFFE:

Q. Did it not go a little further than that, Mr. Lennox? Has it not been suggested to you by some of the Broker-Dealers themselves that there is danger of a certain group or groups getting control of the Association?

A. That is always an issue. It is quite evident there are two distinct factions within the Association now.

(PAGE 2085 follows)

Q. At least two?

A. Two major ones. I do not know how many others, but there are two which are ---

BY MR. GRUMMETT:

Q. Vocal at the present time?

A. Yes, and both big enough to annoy each other.

BY MR. JULLIFFE:

Q. You have used the word "front", as opposed to the regular operators?

A. Yes.

Q. And from it, I take it you are satisfied there have been "fronts" operating in the past three years, in the business?

A. There is no question about that.

Q. I suggest you are satisfied there are "fronts" operating in the business?

A. Absolutely.

Q. Does that not, in itself, endanger this theory to which you refer, the theory of self-government in the business? Does that not in itself make it difficult to compare this business with some other businesses and professions? In what other business

do you find "fronts" on a considerable scale?

A. They call them "silent partners".

THE CHAIRMAN: That may be common in almost every business.

BY MR. JOLLIFFE:

Q. But for your purposes, and under the present Act, they cannot be legitimate.

A. No, because they are required by statute to give the names of anybody holding a greater than ten percent interest.

Q. You are personally concerned with the integrity of the men holding the licenses?

A. Yes, and we feel that a "front" is irresponsible, and he is following the dictates of somebody else.

Q. And he is withholding information you are entitled to get?

A. Yes.

Q. And for that reason he is not the one to whom you would want to issue a license -- if you could prove that?

A. Yes.

Q. If you had adequate evidence upon which to act?

A. Yes.

Q. Now, does it not come to this -- I want to be very clear about this; under this Act, and your administration of this Act, I suggest to you there is no such thing as a "legitimate front" or a "legitimate silent partner"?

A. No, there is no such thing as a "legitimate silent partner", who is participating in the profits.

Q. There has to be disclosure?

A. Yes.

BY THE CHAIRMAN:

Q. What is the section which deals with that? As long as he discloses the silent partner, is that not sufficient -- if the silent partner is satisfactory to you?

A. On his letterheads and everything else he has to put the names of the persons who hold greater than a ten percent. interest.

Q. In other words, there is nothing illegal about his carrying on with a silent partner, providing he is properly disclosed?

A. Yes.

Q. But what you mean by a "front" is a silent

partner which is not disclosed?

MR. JOLLIFFE: No, no. Do you not mean, Mr. Lennox by "front" that the man acting as a "front" must have a silent background?

THE CHAIRMAN: That is the case where the "front" is the silent partner.

MR. JOLLIFFE: We have heard about the "front ends" and the "back ends" in this enquiry before.

MR. VILLENEUVE: Yes, in the booking business.

BY MR. JOLLIFFE:

Q. And the difficulty is to find the "back end".

A. I may be optimistic, but I think we have pretty nearly overcome the difficulty of the "front", because it has ceased to be a profitable undertaking.

If the commission can succeed in catching up with the dealer on his first deal -- I mentioned the name of a dealer this morning. He was not half-way through his first deal, before the Commission had him out of business.

I describe that individual --

Q. That was last month?

A. Yes. These "fronts" certainly did not make very much money out of that undertaking. There are a series of cases dating back to 1945, up to 1949, where we caught several dealers before they completed their first deal.

Q. That you pointed out to the broker-dealers the danger of this thing?

A. Yes.

Q. And I take it that was one of the grounds upon which you made your decision?

A. That is one of the grounds. I could have cancelled his license simply on the fact that he sold stock which was not qualified. The Commission often takes into consideration these factors, with regard to the matter of education.

Q. I am not questioning your decision for a moment, but you said a few minutes ago that you could not very well act unless you have evidence upon which to act?

A. That is right.

Q. That is not always easy to get, is it?

A. It is terribly difficult to get.

Q. Is it not correct that sometimes -- perhaps

not in this case, which seems to be pretty obvious -- but is it not true that in some cases considerable ingenuity has been exercised to hide the true facts from your investigators?

A. It certainly is.

Q. That would be putting it mildly?

A. Yes.

THE CHAIRMAN: I think we shall adjourn for five minutes.

MR. JOLLIFFE: Yes.

---Whereupon a short recess was had.

---Upon resuming.

BY THE CHAIRMAN:

Q. Shall we proceed, Mr. Lennox?

A. Yes, sir.

BY MR. JOLLIFFE:

Q. There are a lot of other matters which arose in that connection, but I think I would like to have Mr. Houck have the floor.

MR. HOUCK: May I say at the outset, Mr. Chairman,

that I have prepared a few questions, and with the permission of the Committee, I sent a few questions to Mr. Lennox, because I thought to be prepared to properly answer, would require some preparation.

The first question is:

"Q. What is the number of United States Citizens registered either as Brokers or Salesmen in Ontario, and what percentage is this figure of the total of registered Salesmen and Brokers?"

A. Sixty.

BY MR. JOLLIFFE:

Q. That is in both categories?

A. That is in all categories. There are three, salesmen, brokers on the Stock Exchange, and the I.D.A.

BY THE CHAIRMAN:

Q. The Investment Dealers' Association?

A. Yes.

BY MR. HOUCK:

Q. What percentage of those would be the total of registered salesmen and brokers?

A. About four percent. That is basing our average registration at fifteen hundred. I should say that out of the sixty, twenty-nine have taken out Canadian citizenship.

BY THE CHAIRMAN:

Q. They have applied for it, or now have it?

A. Our records show they now have it.

Q. Then they are not American citizens?

A. No.

Q. So there would only be thirty-one now?

A. Yes.

BY MR. GRUMMETT:

Q. About two percent?

A. Yes, two percent.

BY MR. HOUCK:

Q. We read in McLean's and other publications that there are some Americans with past criminal records registered by the Securities Commission; is that correct?

A. That requires a little explanation. Under the 1945 Act,-- Section 82 of that Act, it called for a

general review of all registrations, and in the course of that review, the Commission might have considered in some cases that the person in question had paid his debt to society, as the saying goes.

I know of one case where the Commission, as it is now constituted, allowed registration where a chap was convicted in his teen-age, and he paid his lawyer a retainer of \$200 to appeal the case, and the lawyer did not appeal it, and was subsequently disbarred for that default, and other defaults, and the Commission had looked into the matter fairly carefully.

We cannot naturally decide on the merits of the appeal, but we thought there was a great deal of doubt, and there was a very good possibility that the boy might have won his appeal, and after several refusals, finally when he came up with a lawyer, who kept the case on a proper basis, he was allowed registration.

There is a case, which I think is probably notorious on Bay Street, because the gentleman involved is credited with being the head of one of the factions.

Rumours went around Bay Street a few months ago that -- it dates back to February of this year -- that this particular individual had been convicted

and served time in the United States, and even been given lashes.

We communicated with the R.C.M.P., and the F.B.I., but could not find any trace of any such conviction.

Then somebody had the bright idea that there is only one state in the union which gives lashes, and that is the State of Alabama, so we got in touch with the authorities in the State of Alabama, and got fingerprints, and everything else, but we have been unable to verify any such conviction. It looks like simply a vicious rumour.

But, much to my surprise, I found out that this chap when twenty years old, had been convicted of robbery, but only given a suspended sentence. He was registered in 1947. That was before my time. But when I heard of this robbery and suspended sentence, it looked more like petty theft, and I thought this chap had been before the full Commission, and the Commission had considered the merits, and he was eligible for registration.

I find, however, that I was wrong. He never was before the full Commission. I found my predecessor in office was not responsible for this registration, and I hope I will not have to mention names, but the

person responsible is no longer with the Commission. However, it is entirely irregular, and it is an established policy with our Commission, that no person with any type of record whatever, or whose license has ever been cancelled or suspended, should be licensed, without appearing before the full Commission.

Q. Was he registered as a salesman or broker?

A. He was registered as a broker, in 1947.

Q. Was he required on both or either of these two occasions to disclose that he had a criminal record?

A. He disclosed it. I might say this, which is relevant to your question: we always hear about people with criminal records.

A year ago there was a person convicted in the magistrate's court for filing false information with the Commission, inasmuch as he failed to disclose a criminal record. There is a charge now pending against this man's brother, although his brother does not use the same name. We had his brother arrested a month or so ago, and he is out now on six thousand dollars bail, awaiting trial.

Outside of that, I have no knowledge of people having criminal records.

BY MR. HOUCK:

Q. You do make a close check-up of their past before permitting registration?

A. Yes. We now contact the Royal Canadian Mounted Police in any doubtful case, /has a roving disposition, or anything else, we contact the Mounted Police and the F.B.I., if necessary. I do not know why that was not done before, because that is the only sure way.

BY MR. JOLLIFFE:

Q. When you say "any doubtful cases", what does that mean?

A. If a person has lived in Toronto all his life to the knowledge of the Commission, and we get a report from the Provincial Police, or the city police --

BY THE CHAIRMAN:

Q. You get that, at any rate?

A. Yes. But if a person is not very well known to the Commission, we go further. This person who is out on bail now secured registration in 1944, and all the trouble which has developed is not on account of the present-day Commission. He was registered in

1944 as a salesman, very shortly after he had served a prison term of three and one-half years.

BY MR. GRUMMETT:

Q. In Canada?

A. No, in the United States. He is a Canadian, but he served time in the United States.

BY MR. HOUCK:

Q. As for the Ontario Provincial Police; the applicants have to have letters in doubtful cases?

A. We require three references, including a reference from a bank.

BY THE CHAIRMAN:

Q. That is, in each case?

A. In every case.

BY MR. HOUCK:

Q. Are there any residence requirements prior to registration being granted to American citizens?

A. That is dealt with in Section 14 of the Act, which reads:

"(1) Registration may, in the absolute discretion of the Commission, be refused to any person who has not been a resident of Ontario for at least one year immediately prior to the date of application for registration with the intention of making his permanent home in Ontario, unless at the time of application such person is registered in a capacity corresponding to that of a broker, investment dealer, broker-dealer, sub-broker-dealer, security issuer, investment counsel or salesman under the security laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is otherwise suitable for registration.

(2) Where a company or partnership makes application for registration, the registration may, in the absolute discretion of the Commission, be refused, unless every officer and director, or every member, as the case may be, has been a resident of Ontario for at least one year immediately prior to the

date of application for registration, with the intention of making his permanent home in Ontario, or is registered in a capacity corresponding to that of a broker, investment dealer, broker-dealer, sub-broker-dealer, security issuer, investment counsel or salesman under the security laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is otherwise suitable for registration.

(3) For the purpose of this section, a person shall not be deemed to cease to reside in Ontario by reason only of his absence from Ontario as a member of His Majesty's armed forces."

BY MR. JOLLIFFE:

Q. That is discretionary?

A. Yes.

Q. You can, under that section, grant a registration to a man who has been here much less than one year, if you see fit to do so?

A. That is quite right, sir. A preference is shown to persons who have been registered in a corresponding capacity in another jurisdiction, but, strangely enough, those are the individuals who are giving us the most trouble,--The American citizens coming over here probably because they got into trouble over there, and the S.E.C. has taken action, or else they know that trouble is developing, and they get out before it comes, and several months after we may hear from the S.E.C., or we may find out that some proceedings have been taken.

I have two cases in point now, where I have written to the S.E.C. to tell me if they want these two individuals to appear before them, we will require an undertaking from these two individuals to appear when called, and upon the fulfillment of that undertaking will be a condition precedent to their continued registration in this country.

Q. Are there any other requirements? What investigations are made by your Department before registrations are granted to brokers or salesmen?

A. Yes, I can go over the very steps we take.

First, the applicant must be acceptable to

the B.D.A., the Toronto Stock Exchange, or the I.D.A., as the case may be. He must furnish the Commission with three references, including a bank reference. His record is checked with the Better Business Bureau or the police, including the R.C.M.P., and, in doubtful cases, including the F.B.I.

The applicant must fill out a comprehensive questionnaire, verified by his own affidavit, and that pretty well gives his life history.

In a case of uncertainty, we will have him examined -- or cross-examined, I think is more correct -- under the provisions of Section 12 of the Act. Failing that, if it is a doubtful case, registration will be refused, subject to review by the full Commission.

If the man has any type of a record, or even been fined under the Act, it is a matter of policy that he must go before the whole Commission.

Q. What are the abuses alleged by the Securities and Exchange Commission against brokers and salesmen in Ontario?

A. The main complaints are extensive mailings into the United States of objectionable literature, and

the extensive use of the long distance telephone.

BY MR. DOWNER:

Q. I see that Section 52 reads:

"(1) No person shall,

(a) call at any residence; or

(b) telephone from within Ontario to
any residence within or outside of
Ontario,

for the purpose of trading in any security
with any member of the public.

(2) Subsection 1 shall not apply,

(a) where the person calls at or
telephones to the residence,

(i) of a close personal friend, a
business associate or a customer
with whom or on whose behalf the
person calling or telephoning has
been in the habit of trading in
securities, or

(ii) of a person who has requested
in writing that information respecting
a specific security be furnished
him by the person so calling or

telephoning, but in such case the person so calling or telephoning shall call or telephone only in reference to that security; or

(b) to a trade or trades in any securities in respect of which registration is not required under this Act.

(3) In this section "residence" includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto."

MR. JOLLIFFE: There are certain exceptions.

MR. DO NER: There are exceptions now. Apparently the people do use these telephones.

BY MR. HOUCK:

Q. What steps have been taken by you since your appointment as Chairman of the Ontario Securities Commission to remedy the abuses claimed by the Securities Exchange Commiasion?

BY THE CHAIRMAN:

Q. You mentioned the excessive use of the

telephone. You mentioned a little while ago, that under the American law, there is no provision that renders a telephone call of this kind illegal over there. Is that correct?

A. That is my understanding. The Americans object to the repeated calls, that is, selling to a person through the mails, and then probably selling him some more on the first telephone call, and keeping after him and keeping after him continually.

Q. It is the volume, rather than the use of the telephone?

A. Yes. Our best telephone artists are the best telephoners. I think when a person gets a call, he probably recognizes the accent, and is sort of disarmed.

Q. They are so flattered by the call over long distance that they "fall" for the mirepresentation?

A. Yes.

BY MR. JOLLIFFE:

Q. You dealt with one of these cases in one of your decisions?

A. I covered that in my decision, yes.

In answer to Question 6:

"Q. What steps have been taken by you since your appointment as Chairman of the Ontario Securities Commission to remedy the abuses claimed by the Securities Exchange Commission?"

In the past year, we had over one hundred informal investigations, and forty-two formal investigations, that is, investigations under orders from the Attorney-General.

A very great proportion of those informal investigations might simply consist of one of our investigators walking into one of these illegal houses and checking his telephone bills, and all those preventive steps guarding against continued high-pressure methods.

They do not like it when one of our boys walks in, if they have been dealing in this high-pressure type of selling.

In the bulletin of August, 1949, on Page 5 -- I do not know whether I did it, or the whole Commission -- we dealt with suspensions, and the question of mailing was again brought to the attention of the Broker-Dealers' Association.

In September, 1949, I issued a circular which I think is very important, because it was, to a

large extent, a repetition, reminding them of a judgment handed down by Mr. McTague, and I enlarged on this matter in a bulletin, I have here somewhere. It is not very long, and I will read it. It is dated September 6th, 1949, and this circular was mailed by registered mail to all broker-dealers. It reads as follows:

NOTICE TO ALL MEMBERS OF THE BROKER-DEALERS'
ASSOCIATION, SEPTEMBER 6th, 1949

Following several discussions with your Board of Governors the undersigned agreed as of the 28th January, 1949, to give your Association an opportunity to control the extent of offerings of securities being made in the United States and other points outside Ontario. The experiment has not proved satisfactory and it is now mutually agreed following further discussions that the Commission should again exercise its jurisdiction on the same basis as it did before the Broker-Dealers' Act was proclaimed. At least until such time as your Association is able to offer some fair and sound solution to the problem.

Accordingly the principle laid down in the decision of Canadian Securities dated March 1st, 1948, will be strictly enforced and the scope of the decision will be enlarged to meet existing conditions, wherein the size of mailings has been materially increased by including a comparatively large number of Ontario mailings with the possible intent of avoiding the consequences of the decision in question.

The gist of the decision is that a dealer who devotes his efforts almost entirely to effecting sales outside Ontario should not enjoy the right of registration. It should now be pointed out in view of the increased volume of mailings that a dealer may go through the motions of fairly extensive mailings within Ontario and still in the final analysis be deemed to be devoting almost his entire effort to effecting sales outside Ontario. Moreover, it may be found that his sales campaign over all is indicative of over reaching and other high-pressured methods.

The Commission working in conjunction

with your Board of Governors considers this step to be in the best interests of the Association as a whole."

Where I say in the second paragraph:

"Accordingly the principle laid down in the decision of Canadian Securities dated March 1st, 1948 will be strictly enforced and the scope of the decision will be enlarged to meet existing conditions, wherein the size of mailings has been materially increased by including a comparatively large number of Ontario mailings with the possible intent of avoiding the consequences of the decision in question."

I mean going through a form of mailing so that the percentages will look all right.

What I had in mind in my remarks concerning "sales outside Ontario" was that they might get some old, obsolete mailing list, or some old city directory, and then the final test would come, even if they did get enquiries, within the provisions, they could not follow that up by telephoning, and it would defeat their telephoning to the United States.

That was in September, 1949, and what I am endeavouring to show is, this matter was constantly kept before the Association, and that disciplinary action was taken on many cases.

The bulletin of November, 1949, at Pages 7 and 8, reads as follows:

"Although the Commission acted quickly, despite the fact it did not receive notice of his intention to engage in primary distribution, the public was very heavily involved before the Commission could obtain an over-all picture of all the ramifications of this transaction. Having the public interest in mind and having regard to certain representations indicating that the merits of the issue were above average, it was decided to afford this dealer an opportunity to complete distribution before any drastic action might be taken.

The investigation accordingly was not closed. A further check was made and an interim report was issued, dated September 26, 1949, indicating certain unsatisfactory conditions, which need not be considered at

this stage except to point out that in October an application for a further release of vendor shares from escrow was refused by virtue of the facts disclosed in this interim report.

On November 4, 1949, in the course of a preliminary investigation involving the market activity of Consolidated Lebel Oro Mines Limited, it was discovered that Mr. Jones had temporarily, at least, abandoned distribution of Alberta Oil Leaseholds and was devoting all his efforts to sponsoring the sale of a listed stock, namely, Consolidated Lebel Oro. His registration was accordingly suspended for ten days on the grounds that he was not taking advantage of the opportunity afforded him to complete distribution and was engaged in activities which **were** at least questionable inasmuch as the Commission felt bound to investigate after receiving notice of the activities of this listed stock from outside sources.

He has since applied for a review by the full Commission of the order suspending his registration. As the term of his suspension will expire before his application can be

heard by the full Commission, I consider it expedient to deal with the real question confronting the Commission, namely, whether upon the facts disclosed during the original investigation,"

Then, in December, 1950, a letter was sent to the Broker-Dealers' Association, along the same line, and the broker-dealers sent out a warning in their bulletin.

In December, 1950, it was rather a critical time, because one of the factions on Bay Street was saying that the other faction was going to enter into a big mailing scheme, and vice versa.

The danger was that the little fellow might think, "Well, the big fellows are going to enter into a big mailing, and I might as well take advantage of the last swing."

I wrote, in December, 1950,

"In view of some official correspondence from the United States recently, it appears that the authorities are on the alert in order to be prepared for a further mail ban if given the necessary provocation. There is,

of course, nothing we can do about it if they intend to adopt an unreasonable attitude. On the other hand, when we are approaching the New Year, it is only natural to be somewhat apprehensive about a revival on a large scale of the type of operation which has in the past been so harmful to the entire securities business.

Briefly my view is that in the event of another mail ban, neither the Commission nor your Association can properly sit back and accept the findings of the United States authorities as representing the actual facts, but we must sift out the facts for ourselves and determine who are mainly responsible for an unfortunate situation, having regard to the volume of mailing and other pertinent factors.

Naturally my chief concern is for the majority engaged in the securities business who may suffer from the actions of a few. In the interests of the majority, any repetition of really excessive mailing should result in cancellation of registration. Unfortunately however, the harm is already done before

action can be taken.

It would not be expedient to issue a warning in the Bulletin, as the S.E.C., and others in the United States are on our mailing list. It occurs to me that your Board might see fit to issue a suitable warning in an attempt to ward off another blow from the Postal authorities."

(Page 2112 follows)

That is, since September 6th, and the Commission was very much on the alert on that point, when there were rumours going on about the mailings, and we started a very extensive check, even at the risk of some of our more extensive investigations being dropped for a time, and that survey really resulted in a great many cancellations.

In the early part of the year, there were exceptionally heavy cancellations, and these cancellations preceded the adverse publicity which issued from St. Louis in March, 1951. The bulk of the cancellations were in the latter part of January and on through February.

Also, in conjunction with that situation, as a result at the close of 1950, I obtained undertakings of two large mailing houses to refrain from sending mail to the United States for a period of two months -- I think it was. I am satisfied those undertakings were lived up to.

Then in the bulletin of February, 1951, at Pages 5 and 6, I dealt with high pressure telephone methods as one of the factors, -- in fact, I think the only factor -- in connection with cancellations.

BY MR. DOWNER:

Q. In February?

A. February, 1951.

Beside this undertaking, there were several warnings issued to individuals suggesting that their records were not of the very best, and they had better be very careful, although as a matter of principle, I do not believe too much in warnings.

With reference to those dates and the continual investigations and "spot" checks, I think this matter has been kept before the industry constantly, and they have come to a realization that they are only digging their own graves, so to speak, if they do not heed the warning.

Apart from the question of whether or not we should discourage intensive solicitation in the United States, is this practical question; if a broker is dealing with people outside the province continually, we have great difficulty in ascertaining what the standards for the trading are. When he is dealing in the province illegally, we can examine witnesses readily, but when he is using the long distance telephone to San Francisco, or some other point, we really do not know what he is doing.

MR. HOUCK: That answers my question.

BY MR. GRUMETT:

Q. Mr. Lennox, is there any possible way of ascertaining the volume of mailing which goes out to the United States from Ontario?

A. Yes, we can get fairly accurate figures, but we would have to go into a brokerage house and examine his printing bills, and postage, and everything else, and we would know rather accurately.

You are interested in the money involved, and the truth or otherwise of some of these statements made in the American Press, but I think I have broken that down rather satisfactorily, as far as I have gone.

BY MR. JOLLIFFE:

Q. Just before you leave that; you spoke of difficulty in ascertaining just how business is done over a long distance, by telephone. Do you, in your hearings, accept affidavit evidence?

A. Yes, we have.

Q. I gathered that you did that in the Junior Golds case, in February, 1950?

A. Yes.

Q. Because that is a case where the customer was in Oregon, where he was over-loaded with a lot of telephoning?

A. That is where the man saw a vision?

Q. Yes, he saw a Divine vision.

A. Yes, and he saw a pot of gold at the end.

Q. Apparently in that case I adduce you accepted, as evidence affidavits from Oregon?

A. The attorney for the defence put in affidavits, as I recall it. The "Pastor", as they call the person here, put in an affidavit, saying that this chap might have had some strange beliefs, but he was primarily a sound businessman.

Q. What I am getting at is this, as a matter of practice -- and I suppose it is for you to determine your own practice and procedure -- you do accept affidavit evidence?

A. Yes, but each case is decided on its own merits.

Q. But you do not know of any reason why you could not accept affidavit evidence from any other jurisdiction?

A. No, no definite reasons, no. I think in that case they asked permission from the full Commission, and it was granted. It is very rarely ever requested.

Q. Has affidavit evidence ever been used from abroad, against a licensee?

A. Affidavits from abroad have laid the foundation in investigations, but we never acted purely on the strength of an affidavit.

Q. That is not quite what I mean. What I am trying to get at is this; in the case I mentioned, apparently you permitted the applicant's counsel to use an affidavit, or more than one affidavit, in the applicant's favour as evidence?

A. Yes.

Q. Now, what would be the position if someone -- the complainant, I suppose, or one of your own investigators -- attempted to file an affidavit that would be unfavourable to the licensee? Would you accept it as evidence?

A. I certainly would not accept the affidavit of an investigator.

Q. No, no; but I am speaking of affidavits from abroad.

A. No, I would not act on the affidavit --

Q. Perhaps I used the wrong word. Would you admit it as evidence quite apart from any weight you might attach to it, or any decision you might reach? Would it be admissible evidence under the practice of

your Commission?

A. I think that would be up to the full Commission. The matter has never arisen, because when we get an affidavit from the complainant or investigator, it is used as a basis for an investigation.

BY MR. HOUCK:

Q. You have pretty well answered my next question;

"What is your present policy with respect to mailing by brokers to the United States, and what steps are taken to check and supervise the material mailed?"

Now, my next question is:

"What laws of Ontario or of the Dominion of Canada are being violated by brokers or dealers mailing to the United States in soliciting the sale of securities?".

A. I do not think any law of Ontario has been violated because I think Section 52 implies that a person can telephone from within Ontario to outside Ontario, or mail from Ontario to outside of Ontario if they comply with certain provisions.

So, in the face of that Section, I do not see how you could say they are violating any law of

Ontario.

Probably this is not any of my business, but it occurs to me that the provincial government cannot prevent persons using the telephone or using the mails.

Q. What prohibition is there, if any, against mail from brokers and dealers in the United States of America, soliciting the sale of securities in Ontario with the same type of literature that goes from Ontario into the United States?

A. Our Act says:

"No person shall trade in Ontario unless registered, and shall not sell any securities unless the security is qualified".

So I think the whole thing turns on the question of trading. If you mail from New York State to Ontario, are you trading in Ontario?

BY MR. GRUMETT:

Q. That is one individual sale?

A. Yes. It turns on the question of where they are trading, as a local proposition. It is not a practical matter, as far as we are concerned.

BY THE CHAIRMAN:

Q. You mean it does not happen?

A. It probably happens, but we never hear of it.

BY MR. HOUCK:

Q. What jurisdiction has the Ontario Securities Commission over investment counsellors operating in Ontario?

A. Our jurisdiction in the matter of investment counsel is exactly the same as the Broker-Dealers.

BY MR. GRUMMETT:

Q. Is it not covered in the same Section? Your jurisdiction over investment counsel is covered in the same Section as your jurisdiction over Broker-Dealers.

MR. JOLLIFFE: It is specifically mentioned in the Act.

MR. GRUMMETT: Yes.

THE WITNESS: It is just the same as the other.

BY MR. JOLLIFFE:

Q. On the last page of your bulletin, it says, "the following are registered as investment counsel type 1 and investment counsel type 2." There are not very many of them?

A. No.

Q. Is this (indicating) a full and complete list?

A. Oh, well, that is back in February, 1950.

Q. Here (indicating) is a more recent one. I just wondered why it was not a more lengthy list.

A. It grew to fifteen type 1, and now it is back to seven again I think.

There are about six of those who resigned voluntarily or resigned on invitation or were cancelled.

Q. Now, what were the figures?

A. I will give them all over again. Now that we are going to deal with it, I think it should be pointed out there is a very vast difference between investment counsel type 1, and investment counsel type 2.

Investment counsel type 2, advise people on their portfolio, and take a fee for their services, and I think they render a very useful service.

There is a tendency on the part of the type 1 people, to run what is commonly known as a "tipster sheet".

In October of 1950, we started very extensive over-all investigation of the activities of these type 1 investment counsel, but unfortunately the

investigator assigned to that work, underwent a serious operation, and the matter was delayed.

But, in the last two or three months, the Stock Exchange and reputable brokers combined to make representations to the Commission, and one of the representations was that the activities of the investment counsel type 1 should be curbed and checked.

This investigator, who was on the work, was having a very slow convalescence and we put on another investigator, who carried on the investigation, and the result is there are two voluntary resignations; some more were invited to resign, one was suspended, and two cancelled, with the result that some of them have, for one reason or another, abandoned their work.

BY MR. JOLLIFFE:

Q. Seven of them are no longer investment counsel type 1?

A. Yes.

Q. That is, seven out of about fifteen?

A. Yes.

MR. JOLLIFFE: I would like to clear up another point there.

THE CHAIRMAN: Very well.

BY MR. JOLLIFFE:

Q. You said that investment counsel type 2 advise on investments for a percentage fee. Is that what you said?

A. Yes. I understand that is the way they mostly operate. They will take a portfolio and advise people on the portfolio, and will get some percentage of the portfolio; whether it is a very small fraction of one percent. or what it is, I do not know.

Some of these investment counsel, type 2, are outstanding men, and are of a type who would be accepted as expert witnesses in courts of law.

Q. I do not understand the percentage part of it. I notice that among them are Babson's Canadian Report Service; that is an old established service and I would not think it was on a percentage basis. At least, it was not formerly.

A. I am speaking of people like King Elliott, and Babson. I doubt if Babson really requires registration. I think they take it out, as a matter of precaution.

Q. I think they are investment counsel within the meaning of the Act.

A. Yes, but there is a provision there where they publish a newspaper with regular paid subscribers.

Q. I see by Section 18, Sub-section 1(d)

it says:

"a publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives advice as an investment counsel only through such publication and has no interest either directly or indirectly in any of the securities upon which the advice is given and receives no commissions or other consideration for giving the advice and who gives the advice as solely incidental to the conduct of his business as a publisher."

I do not think that exemption would take out the old, established service, because unless they have changed their methods, they had occasionally sent out trial services, and the like. It may be a much better service than some of the others, but in principle, it is advice on investments?

A. Yes.

BY MR. HOUCK:

Q. Has the Ontario Securities Commission any jurisdiction over similar types of investment

counsel operating from the United States **soliciting** subscriptions through mailing or otherwise from residents of Ontario?

A. I think is very much like the question about the trading. It is a question of whether they are operating in their own State or in Ontario.

Of course, from the practical standpoint, even if we consider they are breaking our laws, there is nothing we can do about it.

BY MR. JOLLIFFE:

Q. They are outside of the jurisdiction?

A. Yes.

BY MR. HOUCK:

Q. If investment counsellors registered with the Ontario Securities Commission mail into the United States of America, is this considered by the American authorities a violation of their laws by the S.E.C.?

A. Yes; they issue special orders -- cease and desist orders against investment counsel, the same as they do against brokers and broker-dealers.

Q. Then, is the solicitation by mail or otherwise to residents of Ontario by U.S. investment counsellors considered a violation of our law?

A. That is practically the same as the other question.

It is a question of whether they are operating outside the jurisdiction, or inside the jurisdiction.

BY MR. JOLLIFFE:

Q. What is your view? If an American in Buffalo consistently writes to Mr. Houck in Niagara Falls soliciting a subscription for a stock; what is your view? Is he attempting to trade in Ontario, or is he not?

BY MR. JANES:

Q. What can you do with him anyway?
A. My view is he is trading.

Q. How could you stop him?

MR. JOLLIFFE: You could not, as long as he remains outside the jurisdiction, but he might come across the river to see Mr. Houck, and then he would be in the jurisdiction, and an American citizen in the jurisdiction is as much subject to our laws as anybody else.

MR. HOUCK: Which I imagine is often done along the Border.

BY MR. HOUCK:

Q. What is the number of formal complaints received by the Department from the S.E.C. since your

appointment as Chairman of the Ontario Securities Commission?

A. I checked that very carefully, and I considered formal specific complaints rather than general complaints against the mailing and telephone -- that is, a complaint involving an individual.

I included in those numbers any complaint that is apparently sponsored by the S.E.C.

A complainant may get in touch with the Commission directly, as he gets in touch with the S.E.C.

Q. What is the number?

A. I would say around six. I can refer to about six specific complaints.

Q. But that does not happen very often?

A. No.

BY MR. DOWNER:

Q. Over a period of how long?

A. Over a period of three years.

BY MR. JOLLIFFE:

Q. By that, you mean the S.E.C. communicated with you in each case?

A. Usually, it is this way; the complainant contacts the Commission or writes to the Commission, and he refers to the S.E.C., and then sometimes it is

accompanied by affidavits, which are recognized as being prepared by the S.E.C.

BY MR. JANES:

Q. Then you investigate this complaint?

A. We investigate every complaint.

Q. Did you find the complaints justified?

A. I have a memorandum of all those complaints, which I have prepared in relation to co-operation with the S.E.C. I could bring that in at any time.

BY MR. JOLLIFFE:

Q. Let us see it to-morrow.

A. All right.

MR. JOLLIFFE: Will that be all right,
Mr. Houck?

MR. HOUCK: Yes.

BY MR. HOUCK:

Q. Have any steps been taken or proposed towards working out a uniform form of registration which would automatically qualify an issue registered under the Ontario Securities Act for sale in the various states?

A. Yes. The S.E.C. have what they call -- or what can be described as a "short form of registration".

That permits a company to qualify at 300,000 shares of any issue in any one year. That simply is lodged with the S.E.C., and there is no investigation. There really is very little formality about it.

We have attempted to induce the S.E.C. to extend that privilege to Canada, or Ontario -- I am only speaking for Ontario -- and I went down with the members of the Broker-Dealers on that mission to Washington in September, 1950, I think it was, and I went down there again --

BY MR. JOLLIFFE:

Q. Was it not 1949?

A. I am not just sure at the moment. I went down alone in March of this year and I made a further approach saying if they would extend this privilege to Ontario, we would stamp out all other forms of mailing or solicitation to the United States, on the ground that it would be in the public interest to do so. If we found a legitimate avenue of trade, we would stamp out every other form of trade.

The answer we get in every case is "Extradition", and that is a Federal matter; that is up to the Dominion, whether they will grant extradition

or not, so we are stymied.

MR. JOLLIFFE: I see that the first meeting in Washington was on October 18th, 1949.

BY MR. HOUCK:

Q. Is it true that the requirements of the S.E.C. are so complicated and require such length of time and expense as to make same prohibitive for a company in its promotional stages?

A. Yes, the issue I referred to this morning -- the floatation costs in connection with that issue amounted to \$36,530. and to qualify 1,000,000 shares for sale, the costs are all set out in the prospectus. The legal fees and disbursements amounted to \$9,000., and out of that \$36,000. , \$18,000. is for advertising and costs of distribution. In other words, the issuing company pays to the dealer \$18,000. to assist him in that public distribution.

There (indicating) is one, \$36,500. --

BY MR. JOLLIFFE:

Q. No, but what was the actual cost of qualifying with the S.E.C.?

A. If you want to deduct that \$18,000 registration fee, \$80.00, along with the total of \$9,000., accounting fee \$200.; engineering fee \$1,000,

registration and transfer fees, \$750., printing and engraving, \$5,000. -- this field is a very important item.

When you pass the S.E.C. you still cannot sell securities in the United States, because you have to qualify in any State in which you want to sell the securities. This is just a preliminary hurdle.

I have another case where the Canadian Brewery were issued the exchange shares, with the United States Brewing Company, and the floatation costs there -- that is from an official publication -- was \$45,991., and the professional costs -- that would be legal and accounting -- amounted to \$26,000.

BY MR. DOWNER:

Q. \$71,000. altogether?

A. No, the \$26,000. is included in the \$45,000.

BY MR. JANES:

Q. How many shares were included?

A. The number of shares were to the value of \$61,220. That is simply an exchange.

Q. Almost \$1.00 a share --

BY MR. JOLLIFFE:

Q. Were all the costs, costs of qualifying?

A. Mr. Jolliffe, there (indicating) is the publication

I got.

Q. The heading of the publication is "Costs of Floatation". "Floatation" is a word which covers much more than "qualifying"?

A. There is another case where a Canadian bank wanted to issue some further capital, and wanted to make that open to the shareholders in the province of Ontario. Under those conditions, they would not be required to qualify with the Commission, as long as the offering was made to their own shareholders at no selling cost or commission. If the costs were actually restricted to those ministerial costs, they would not be required to qualify with the Commission.

The bank was obliged, if they made an offer in the United States -- even to their own shareholders, under the provisions of the Bank Act, and they were selling those shares to the shareholders at a slight discount under the market, the estimated cost of qualifying them with the S.E.C. was \$30,000. In other words, what the shareholders would gain by acquiring the shares at a discount would be very largely off-set by the cost to the company qualifying the shares in the United States.

BY MR. HOUCK:

Q. Does registration with the S.E.C. permit

the sale of the securities registered in every State of the Union, or is additional registration required in every State if the securities are to be offered for sale in such States?

A. It does not qualify the securities for sales in the State. Each State has its own security laws, except Nevada. If you want to sell in every State in the United States, it would be a succession of qualification.

BY MR. JOLLIFFE:

Q. What does Nevada do? Is it wide open?

A. Yes, it is wide open.

MR. HOUCK: Wide open for gambling all right.

BY MR. HOUCK:

Q. Is it not true that the costs and expenses of the registration requirements of each separate State of the United States of America would make it prohibitive for any company to do so?

A. I do not know anything about the cost of registering in any individual State. I doubt if the cost would be very high because you do not hear many complaints along those lines, but the delay is an important factor.

Possibly I should enlarge on that. When you consider how the price of base metals fluctuated

over a period of a few years, -- for instance, zinc has gone from .05¢ a pound to $7\frac{1}{2}$ ¢ a pound, and time is an important factor, especially when you are operating in a place like the Yukon, where the seasons only last a few months, and if you wanted your money in a hurry, the season might pass before you could get it.

MR. HOUCK: I have several more questions, but I also have an appointment at 5.30.

THE ACTING CHAIRMAN: Very well, then we will adjourn until to-morrow morning at 10.30.

---The witness temporarily retired.

---Whereupon at 5.10 of the clock in the afternoon, the further proceedings of this committee adjourned until Thursday, July 26th, 1951, at 10.30 o'clock A.M.

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